Nos. 90-813, 90-974

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

HOUSTON LAWYERS' ASSOCIATION, *et al.*,
Petitioners,

v.

ATTORNEY GENERAL OF TEXAS, *et al.*,
Respondents.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,
Petitioners,

v.

ATTORNEY GENERAL OF TEXAS, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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JOINT APPENDIX

JULIUS LEVONNE CHAMBERS
*CHARLES STEPHEN RALSTON
SHERRILYN A. IFILL
99 Hudson Street
Sixteenth Floor
New York, N.Y. 10013
(212) 219-1900

GABRIELLE K. MCDONALD
301 Congress Avenue
Suite 2050
Austin, Texas 78701
(512) 320-5055

Of Counsel:

MATTHEW & BRANSCOMB
A Professional Corporation

**Counsel of Record for Petitioners Houston Lawyers' Association, et al.*

Attorneys for Houston Lawyers' Association, et al.

[Additional Counsel Listed on Inside Front Cover]

PETITIONS FOR WRITS OF CERTIORARI FILED NOVEMBER 11, 1990 IN NO. 90-813, DECEMBER 14, 1990 IN NO. 90-974 CERTIORARI GRANTED JANUARY 18, 1991

*WILLIAM L. GARRETT
BRENDA HULL THOMPSON
8300 Douglas, Suite 800
Dallas, TX 75225
(214) 369-1952

ROLANDO L. RIOS
201 N. St. Mary's, #521
San Antonio, TX 78205
(512) 222-2102

*Counsel of Record for Petitioners LULAC, et al.

Attorneys for LULAC, et al.

TEXAS RURAL LEGAL AID, INC.
DAVID HALL
259 S. Texas
Weslaco, TX 78596
(512) 968-6574

SUSAN FINKELSTEIN
201 N. St. Mary's, #624
San Antonio, TX 78205
(512) 222-2478

Attorneys for Petitioner Christina Moreno

**EDWARD B. CLOUTMAN III
3301 Elm St.
Dallas, TX 75226
(214) 939-9222

E. BRICE CUNNINGHAM
777 S.R.L. Thornton
Dallas, TX 75203
(214) 428-3793

**Counsel of Record for Petitioners Jesse Oliver, et al.

Attorneys for Jesse Oliver, et al.

DAN MORALES
MARY F. KELLER
RENEA HICKS
(Counsel of Record)
JAVIER GUAJARO
Office of the Attorney General
Supreme Court Building
1401 Colorado Street
Austin, TX 78701-2548
(512) 463-2085

J. EUGENE CLEMENTS
(Counsel of Record)
EVELYN V. KEYS
PORTER & CLEMENTS
700 Louisiana Street
Suite 3500
Houston, TX 77002-2730
(713) 226-0600

Attorneys for Respondent Attorney General of Texas

Attorneys for Respondent Judge Sharolyn Wood

SEAGAL V. WHEATLEY
(Counsel of Record)
DONALD R. PHILBIN, JR.
OPPENHEIMER, ROSENBERG KELLEHER & WHEATLEY, INC.
711 Navarro, Sixth Floor
San Antonio, TX 78205
(512) 224-2000

ROBERT H. MOW, JR.
(Counsel of Record)
HUGHES & LUCE
2800 Momentum Place
1717 Main Street
Dallas, TX 75201
(214) 939-5500

Attorneys for Bexar County Respondents

Attorneys for Dallas County Respondents

TABLE OF CONTENTS

RELEVANT DOCKET ENTRIES

Date	No.	Description
7/11/88	1	Complaint filed and 15 summonses issued (sm)
8/15/88	2	Amended complaint by LULAC-Council 4434, LULAC-Council #4451, Christina Moreno, Aquilla Watson, LULAC (Statewide) James Fuller, Matthew W. Plummer Sr. amending complaint [1-1] [Entry date 8/17/88]
9/27/88	7	Answer by William P. Clements, Jim Mattox, Jack M. Rains, Thomas R. Phillips, John F. Onion Jr., Joe E. Kelly, Joe B. Evins, Sam B. Paxson, Weldon Kirk, Charles J. Murray, Ray D. Anderson, Joe Spurlock II (sm)
11/30/88	17	Motion by Midland County to intervene (sm) [Entry date 12/1/88]
1/11/89	20	Motion by LULAC-Council 4434, LULAC-Council #4451. Christina Moreno, Aquilla Watson, LULAC (Statewide), James Fuller, Matthew W. Plummer Sr. to dismiss as to defendant William Clements only (sm)
1/12/89	23	Order granting motion to dismiss as to defendant William Clements only [20-1] (sm)

1/23/89	24	Motion by Houston Lawyers Asso to intervene (sm)
1/23/89		Received Complaint in intervention of Houston Lawyers Association (sm)
1/30/89	28	Motion by Dist Jdgs of Travis with memorandum in support to intervene (sm) [Entry date 1/31/89]
1/30/89		Received answer of District Judges of Travis County (sm) [Entry date 1/31/89]
1/31/89	29	Motion by Fred Tinsley, Joan Winn White, Jesse Oliver to intervene (sm)
2/1/89	30	Response by Jim Mattox, Jack M. Rains, Thomas R. Phillips, John F. Onion Jr., Ron Chapman, thomas J. Stovall Jr., James F. Clawson Jr., Joe E. Kelly, Joe B. Evins, Sam B. Paxson, Weldon Kirk, Charles J. Murray, Ray D. Anderson, Joe Spurlock II to motion to intervene [24-1] (sm) [Entry date 2/2/89]
2/3/89	31	Response by LULAC-Council 4434, LULAC-Council #4451, Cristina Moreno, Aquilla Watson, LULAC (Statewide), James Fuller, Matthew W. Plummer Sr. to motion to intervene [24-1] (sm)
2/9/89	32	Response by Jim Mattox, Jac, M. Rains, Thomas R. Phillips, John F. Onion Jr., Ron Chapman, Thomas J. Stovall Jr., James F. Clawson Jr., Joe E. Kelly, Joe B. Evins, Sam B.

		Paxson, Weldon Kirk, Charles J. Murray, Ray D. Anderson, Joe Spurlock II to motion to intervene [29-1], motion to intervene [28-1] (sm)
2/13/89	34	Response by LULAC-Council 4434, LULAC Council #4451, Cristina Moreno, Aquilla Watson, LULAC (Statewide), James Fuller, Matthew W. Plummer Sr. to motion to intervene [28-1] (sm)
2/13/89	35	Response by LULAC-Council 4434, LULAC-Council #4451, Cristina Moreno, Aquilla Watson, LULAC (Statewide), James Fuller, Matthew W. Plummer Sr. to motion to intervene [29-1] (sm)
2/21/89	40	Motion by Sharolyn Wood to intervene (sm)
2/27/89	45	Motion by F. Harold Entz to intervene (sm)
3/6/89	50	Order granting motion to intervene [45-1], granting motion to intervene [29-1], granting motion to intervene [28-1], granting motion to intervene, [24-1], granting motion to intervene, [17-1] (sm) [Entry date 3/7/89]
3/21/89	55	Answer by Sharolyn Wood to Houston Lawyers Assoc. (sm)
3/21/89	56	Answer to complaint by Sharolyn Wood against Legislative Black Caucus, LULAC-Council 4434, LULAC-Council #4451, Cristina

		Moreno, Aquilla Watson, LULAC (Statewide), James Fuller, Matthew W. Plummer Sr. (sm)
4/6/89	61	Motion by Legislative Black Caucus to intervene as plaintiffs (sm)
4/6/89		Received complaint in intervention of Legislative Black Caucus of Texas
4/13/89	69	Order granting motion to intervene as plaintiffs [61-1] (sm)
5/12/89	85	Second Amended Complaint by LULAC-Council 4434, LULAC-Council #4451, Cristina Moreno, Aquilla Watson, LULAC (Statewide) Joan Ervin, Matthew W. Plummer, Sr., Jim Conley, Volma Overton, Willard Pen Conat, Gene Collins, Al Price, Theodore M. Hogrobrooks, Ernest M. Deckard, Mary Ellen Hicks, Rev. James Thomas (sm)
5/24/89	100	Answer of Jim Mattox, Jack M. Rains, Thomas R. Phillips, John F. Onion Jr., Ron Chapman, Thomas J. Stovall Jr., James F. Clawson Jr., Joe E. Kelly, Joe B. Evins, Sam B. Paxson, Weldon Kirk, Charles J. Murray, Ray D. Anderson, Joe Spurlock II to Second Amended Complaint of LULAC-Council 4434, LULAC-Council #4451, Cristina Moreno, Aquilla Watson, LULAC (Statewide) Joan Ervin, Matthew W. Plummer, Sr., Jim Conley, Volma Overton, Willard Pen Conat, Gene Collins, Al Price, Theodore M.

		Hogrobrooks, Ernest M. Deckard, Mary Ellen Hicks, Rev. James Thomas (sm)
5/24/89	101	First Amended Answer of F. Harold Entz to Second Amended Complaint of LULAC-Council 4434, LULAC-Council #4451, Cristina Moreno, Aquilla Watson, LULAC (Statewide) Joan Ervin, Matthew W. Plummer, Sr., Jim Conley, Volma Overton, Willard Pen Conat, Gene Collins, Al Price, Theodore M. Hogrobrooks, Ernest M. Deckard, Mary Ellen Hicks, Rev. James Thomas (sm)
5/24/89	102	Answer of F. Harold Entz to complaint of Fred Tinsley, Joann Winn White, and Jesse Oliver
11/8/89	282	Memorandum Opinion and Order
11/27/89	286	Order granting in part and denying in part motion to alter or amend Order of November 8, 1989
12/22/89	293	Motion to Intervene of Tom Rickhoff, Susan D. Reed, John J. Specia, Jr., Sid L. Harle, Sharon Macrae, Michael P. Peden
12/26/89	302	Order granting Motion to Correct Clerical Mistake in Order of November 27, 1989
1/2/90	309	Order granting in part, denying in part Joint Motion for Entry of a Proposed Interim Plan, granting in part Motion

		to Certify the Opinion and Order of November 8, 1989 for Interlocutory Appeal, denying a stay in the proceedings, denying motion to intervene (sm)
1/11/90	331	Order amending order of January 2, 1990 (sm)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

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LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), *et al.*,

PLAINTIFFS

Houston Lawyers' Association
Alice Bonner, Weldon Berry, Francis Williams,
Rev. William Lawson, Deloyd T. Parker,
Bennie McGinty

PLAINTIFF-INTERVENORS

vs.

No. 88-CA-154

WILLIAM CLEMENTS, Governor of the State of Texas, JIM MATTOX, Attorney General of the State of Texas; JACK RAINS, Secretary of the State of Texas, All in their official capacities;
THOMAS R. PHILLIPS; JOHN F. ONION, JR.; RON CHAPMAN; THOMAS J. STOVALL, JR.; JAMES F. CLAWSON, JR.; JOE E. KELLY; JOE B. EVINS; SAM B. PAXSON; WELDON KIRK; CHARLES J. MURRAY; RAY D. ANDERSON; JOE SPURLOCK II, All in their official capacities as members of the Judicial Districts Board of the State of Texas,

DEFENDANTS.

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COMPLAINT IN INTERVENTION

Introduction

1. This action is brought by five Black registered voters and a membership organization of Black attorneys and registered voters in Harris County, Texas, who seek to intervene in MO 88 CA-154, *LULAC v. Clements*, for the purpose of protecting their interests as Black voters in being able to participate equally in the political process and elect candidates of their choice in Harris County district judge elections. They allege that the at large judicial electoral districts scheme as currently constituted, denies Black citizens an equal opportunity to elect the candidates of their choice, in violation of section 2 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973, and the Fourteenth and Fifteenth Amendments of the United States Constitution. They also allege that Art. 5, §7(a)i of the Constitution of the State of Texas was adopted with the intention, and/or has been maintained for the purpose of minimizing the voting strength of Black voters, in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution, 42

U.S.C. §1983 and section II of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973. Plaintiff-intervenors seek declaratory and injunctive relief enjoining the continued use of the current judicial electoral districts scheme.

Jurisdiction

2. This Court has jurisdiction pursuant to 28 U.S.C. 1331 and 1343 and 42 U.S.C. § 1973j(f). This is an action arising under the statutes and Constitution of the United States and an action to enforce statutes and constitutional provisions that protect civil rights, including the right to vote.

3. Plaintiffs seek declaratory and other appropriate relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

Parties

4. Plaintiff-intervenor Houston Lawyers' Association is a member organization of seventy Black attorneys who reside in the Harris County area, each of whom is a registered voter, qualified to vote for district judges in Harris County. As part of its organizational mission, the Houston Lawyers'

Association has worked to promote the fair representation of Blacks in the judiciary in Harris County.

5. Plaintiff-intervenor Weldon Berry is an adult Black citizen of the United States who resides in Harris County, Texas. He is registered to vote, and is qualified to vote for district judges in Harris County. He was an appointed district judge who lost in an at large election in Harris County, Texas.

6. Plaintiff-intervenor Francis Williams is an adult Black citizen of the United States who resides in Harris County, Texas. He is registered to vote and is qualified to vote for district judges in Harris County. He was an appointed district judge who lost in an at large election in Harris County, Texas.

7. Plaintiff-intervenor Alice A. Bonner is an adult Black citizen of the United States who resides in Harris County, Texas. She is registered to vote, and is qualified to vote for district judges in Harris County. She was an appointed district judge who lost in an at large election in Harris County, Texas.

8. Plaintiff-intervenor William Lawson is an adult Black citizen of the United States who resides in Harris County, Texas. He is registered to vote, and qualified to vote for district judges in Harris County.

9. Plaintiff-intervenor Deloyd T. Parker, Jr. is an adult Black citizen of the United States who resides in Harris County, Texas. He is registered to vote, and qualified to vote for district judges in Harris County.

10. Plaintiff-intervenor Bennie McGinty is an adult Black citizen of the United States who resides in Harris County, Texas. She is registered to vote, and qualified to vote for district judges in Harris County.

11. Defendant William Clements is a white adult resident of the State of Texas. He is sued in his official capacity as Governor of the State of Texas. In his capacity as Governor, defendant Clements is the chief executive officer of the state and as such is charged with the responsibility to see that the laws of the State are faithfully executed.

12. Defendant Jack Rains is a white adult resident of the State of Texas. He is sued in his official capacity as

Secretary of State of the State of Texas. In his capacity as Secretary of State, he is the chief elections officer of the state and as such is charged with the responsibility to administer the election laws of the state. The Secretary of State is further empowered under the Texas Election Code, Section 31.005, to take appropriate action to protect the voting rights of the citizens of Texas from abuse.

13. Defendant Jim Mattox is a white adult resident of the State of Texas. He is sued in his official capacity as Attorney General of the State of Texas. In his capacity as Attorney General he is the chief law enforcement officer of the state, and as such is charged with the responsibility to enforce the laws of the state.

14. Defendants Thomas R. Phillips, John F. Onion, Ron Chapman, Thomas J. Stovall, James F. Clawson, Jr., Joe E. Kelly, Joe B. Evins, Sam M. Paxson, Weldon Kirk, Charles J. Murray, Ray D. Anderson, and Joe Spurlock, II, are members of the Texas Judicial Districts Board, which was created by Art. 5, Sec. 7a of the Texas Constitution in 1985. The Judicial Districts Board is required to enact statewide

reapportionment if the legislature fails to do so, after each federal decennial census. In addition to statewide reapportionment, the Judicial Districts Board may reapportion the judicial districts of the state as the necessity arises in its judgment. The Judicial Districts Board is comprised of twelve *ex officio* members, and one lawyer member appointed by the Governor of the State of Texas. No member of the Texas Judicial Districts Board has ever been Black.

Factual Allegations

15. Texas has a history of official discrimination that touched the right of Black citizens to register, to vote, and otherwise to participate in the democratic process.

16. Primary elections were restricted to whites in Texas until a Black resident of Houston successfully challenged this discriminatory practice before the Supreme Court of the United States in 1944.

17. The Texas Legislature created a state poll tax in 1902 which helped to disenfranchise Black voters until the use of poll taxes was outlawed by the Supreme Court of the United

States in 1966.

18. It has been estimated that the poll tax and white primary reduced the number of Blacks participating in Texas elections from approximately 100,000 in the 1890's to 5,000 by 1906.

19. The State of Texas, and its political subdivisions are covered by Section 5 of the Voting Rights Act of 1965, as amended, the special administrative preclearance provision for monitoring all State and local voting changes.

20. Elections in Texas in general, and Harris County in particular, are characterized by significant racial bloc voting. In such elections, white voters generally vote for white candidates and Black voters generally vote for Black candidates. The existence of racial bloc voting dilutes the voting strength of Black voters where they are a minority of the electorate.

21. Texas has traditionally used, and continues to use unusually large election districts, particularly in large metropolitan areas such as Harris County, which have large concentrations of minority voters.

22. The political processes leading to nomination or election in Texas in general, and Harris County in particular, are not equally open to participation by Blacks, in that Blacks have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. For example, Black citizens continue to bear the effects of pervasive official and private discrimination in such areas of education, employment and health, which hinders their ability to participate in the political process.

23. According to the 1980 Census, Texas had a total population of 14,228,383. Blacks comprise approximately 12 percent of the State's population.

24. No Black attorney has ever served on the Texas Supreme Court or on the Texas Court of Criminal Appeals.

25. District judges in Texas are elected in an exclusionary at large numbered place system.

26. Only 2% of district judges in Texas are Black. One (1) percent of the State's appellate justices are Black.

27. Harris County is made up of 27 cities in southeastern

Texas, of which Houston is the largest. Houston is the largest city in Texas. The population of Houston is approximately 1,728,910. The Black population of Houston is 440,346.

28. Harris County covers 1,723 square miles. According to the Texas Data Center, in 1987 the population of Harris County was 2,782,414. Blacks comprise approximately 19.5% of the Harris County population.

29. The voting age population of Harris County is 1,685,081. Eighteen (18) percent of the voting age population in Harris County is Black.

30. Harris County is served by fifty-nine (59) district judges. This is the largest number of district judges of any judicial district in Texas. Harris County is also the largest judicial district by population.

31. In recent years Black candidates have run for district judge in almost every general election in Harris County, yet only 4 judges out of 59 (6.7% of the district judges), are Black.

32. In the November 1988 General Election for example,

six Black candidates ran for twenty-five (25) contested district judge positions. All six Black candidates lost, despite overwhelming Black voter support. Similarly, in the November 1986 General Election, of ten Black candidates who ran in twenty (20) contested races, eight lost, despite overwhelming support from Black voters.

33. Justices of the Peace are elected from single member precincts within Harris County. There are 2 Black Justices of the Peace in Harris County, elected from a precinct with a majority Black voting age population.

34. There is a substantial degree of residential segregation by race in Harris County.

35. Blacks in Harris County are a politically cohesive, geographically insular minority and the judicial candidates they support are usually defeated by a bloc voting white majority.

36. Plaintiff-intervenor reallege the contents of paragraphs of 11-29 of Plaintiffs' First Amended Complaint, as they relate to Harris County, Texas.

37. In 1985, Art. 5 §7 of the Texas Constitution of 1876

was amended to include §7(a), which created the Judicial Districts Board and provided in relevant part that:

> The legislature, the Judicial Districts Boards, or the Legislative Redistricting Board may not redistrict the judicial districts to provide for any judicial district smaller in size than an entire county except as provided by this Section. Vernon's Ann. Tex. Const. Art. 5, §7(a)i.

38. Prior to the 1985 amendment, the Texas Constitution provided that "The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law." Art. 5, §7, Texas Constitution of 1876.

39. Although all counties in Texas have more than one district judge, no county in Texas holds elections for single member judicial districts. All districts judges in Texas run in exclusionary at large, winner take all, numbered place elections.

40. This electoral practice dilutes the voting power of politically cohesive, geographically insular communities of Black voters which could constitute effective voting majorities in single member districts.

41. Using 1980 census figures, it would be possible to draw at least eleven single member geographically compact districts of equal population in which the majority of the voting age population is Black.

42. In the alternative, the failure to use a non-exclusionary at large election system for district judges, dilutes the voting strength of Black voters. The use of a non-exclusionary at large voting system could afford Blacks an opportunity to elect judicial candidates of their choice. For example, under an at large system utilizing limited or cumulative voting, Black voters would have a more equal opportunity to elect district judges.

Allegations Regarding Intervention

43. On July 11, 1988 plaintiffs filed an action on behalf of Mexican-American and Black plaintiffs challenging the district judges schemes in forty-four (44) counties throughout Texas, including Harris County.

44. Plaintiff-intervenors seek to intervene in this action, pursuant to Rule 24 (a) of the Fed. Rule Civ. Procedure, in order to protect the interests of Black plaintiffs in the Harris

County area, who will be affected by a decision in this case. They are entitled to intervene as a matter of right because their application is timely, disposition of the action may impair or impede the ability of Black voters to protect their interest in ensuring that the method of electing district judges in Harris County is equally open to Black citizens, and the proposed-intervenors are not adequately represented by existing parties.

First Claim for Relief

45. Plaintiffs reallege the contents of paragraphs 1-42.

46. The present districting scheme for Texas district judges was adopted with the intention and/or has been maintained for the purpose of minimizing the political strength of Black voters in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution, section 2 of the Voting Rights Act of 1965 as amended, 42 U.S.C. §1973, and 42 U.S.C. § 1983.

Second Claim for Relief

47. Plaintiffs reallege the contents of paragraphs 1-42.

48. The present districting scheme for Texas district judges

has the result of making the political processes leading to nomination and election less open to participation by Black voters in that they have less opportunity than other citizens to elect the candidates of their choice, and thereby violates section 2 of the Voting Rights Act of 1965 as amended, 42 U.S.C. §1973.

Relief

WHEREFORE, plaintiffs ask this Court to enter a judgment:

1. Granting plaintiffs request to intervene in this action;

2. Declaring that the present districting scheme for electing Texas district judges violates the Fourteenth and Fifteenth Amendments to the Constitution, section 2 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973, and 42 U.S.C. § 1983;

3. Ordering defendants to develop and establish a scheme for electing district judges that fully remedies the dilution of plaintiff-intervenors voting strength and provides Black voters with an equal opportunity to elect the candidates of their choice;

4. Granting plaintiff-intervenors their taxable costs in this action, necessary expenses of the litigation, and reasonable attorney's fees; and

5. Providing such other relief as the Court finds just.

Respectfully submitted,

January 19, 1988

[Caption]

COMPLAINT IN INTERVENTION

I. Introduction

1. Intervenors/plaintiffs Jesse Oliver, Fred Tinsley and Joan Winn White ("Intervenors") are former state district judges of Dallas County, and are Black citizens of the State of Texas. They bring this action pursuant to 42 U.S.C. Section 1971, 1973, 1983 and 1988 to redress a denial, under color of state law, of rights, privileges or immunities secured to plaintiffs by the said laws and by the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

2. Plaintiffs seek a declaratory judgment that the existing at large scheme of electing district judges in Dallas County of the State of Texas violates plaintiffs' civil rights in that such method illegally and/or unconstitutionally dilutes the voting strength of Mexican-American and Black electors; plaintiffs seek a permanent injunction prohibiting the calling, holding, supervising or certifying any future elections for

district judges under the present at large scheme in Dallas County; plaintiffs seek the formation of a judicial districting scheme by which district judges in the target counties are elected from districts are single member districts; plaintiffs seek costs and attorneys' fees.

II. Jurisdiction

3. Jurisdiction is based upon 28 U.S.C. 1343(3) and (4), upon causes of action arising from 42 U.S.C. Section 1971, 1973, 1983, and 1988, and under the Fourteenth and Fifteenth Amendments to the United States Constitution. Declaratory relief is authorized by 28 U.S.C. Section 2201 and 2202 and by Rule 57, F.R.C.P.

III. Plaintiffs/Intervenors

4. Plaintiffs Jesse Oliver, Fred Tinsley and Joan Winn White are Black citizens and registered voters of Dallas County, Texas. They are qualified to vote for district judges of Dallas County. Plaintiffs were appointed district judges who lost an at large election to a white opponent in Dallas County, Texas.

IV. Defendants

5. Defendant William Clements is the Governor of the State of Texas, and is the chief executive officer of the state and as such is charged with the responsibility to execute the laws of the state. Defendant Jim Mattox is the Attorney-General of the State of Texas, and is the chief law enforcement officer of the state and as such is charged with the responsibility to enforce the laws of the state. Defendant Jack Rains is the Secretary of State of the State of Texas, and is the chief elections officer of the state and as such is charged with the responsibility to administer the election laws of the state. Defendants Thomas R. Phillips, John F. Onion, Ron Chapman, Thomas J. Stovall, James F. Clawson, Jr., Joe E. Kelly, Joe B. Evins, Sam M. Paxson, Weldon Kirk, Charles J. Murray, Ray D. Anderson, and Joe Spurlock, II are members of the Judicial Districts Board created by Article V, Section 7a of the Texas Constitution, and pursuant to Article 24.941ff, Texas Revised Civil Statutes, have the duty to reapportion judicial districts within the State of Texas.

V. Factual Allegations

6. District judges are elected either from judicial districts which are coterminous with and wholly contained within a county, or from judicial districts which may be composed of several entire counties.

7. In those counties which contain more than one judicial district, the present election system is an at large scheme with the equivalent of numbered places, the majority rule requirement, and staggered terms.

8. The following counties upon information and belief, contain multiple judicial districts and a sufficiently compact minority population for the drawing of at least one majority combined minority single member district.

Harris	Lubbock
Dallas	Fort Bend
Ector	Smith
McClennan	Brazos
Tarrant	Brazoria
Midland	Taylor
Travis	Wichita
Jefferson	Angelina
Galveston	Gregg
Bell	

9. The above counties contain some 190 judicial

districts, and a combined minority population of almost 30%; however, only 10 or 5.3% of the 190 district judges are minority.

10. The following counties contain multiple judicial districts and sufficient Black population for the drawing of at least one majority-Black single member district:

Harris	Galveston
Dallas	Smith
Tarrant	Bell
Jefferson	McClennan
Travis	Gregg
Brazos	Fort Bend

11. The above counties contain some 164 judicial districts, and a Black population of 16.4%; however, only 7 or 4.3% of the 164 district judges are Black.

12. The following counties contain multiple judicial districts and sufficient Hispanic population for the drawing of at least one majority-hispanic single member district:

Harris	Ector
Tarrant	Lubbock
Galveston	Fort Bend
Dallas	
Travis	

13. The above counties contain some 148 judicial

districts, and a Hispanic population of 15.4%; however, only 4 or 2.7% of the 148 district judges are Hispanic.

14. The following judicial districts contain multiple counties and sufficient minority population for the drawing of at least one majority-minority single member districts:

Judicial District	*County*
81st, 218th	Atascosa, Frio, Karnes, LaSalle & Wilson
36th 156th, 343rd	Aransas, Bee, Live Oak, McMullen & San Patricio
22nd, 207th	Caldwell, Comal & Hays
24th, 135th, 267th	Calhoun, DeWitt, Goliad, Jackson, Refugio & Victoria
64th, 242nd	Castro, Hale & Swisher
34th, 205th, 210th	Culberson, El Paso & Hudspeth

15. The above counties contain some 15 judicial districts, and a combined minority population of 44.32%; however, only 1 or 6.7% of the 15 district judges is Black or Hispanic.

16. The following judicial districts contain multiple

counties and sufficient hispanic population for the drawing of at least one majority-hispanic single member district:

Judicial District	*County*
81st, 218th	Atascosa, Frio, Karnes, LaSalle & Wilson
36th, 156th, 343rd	Aransas, Bee, Live Oak, McMullen & San Patricio
24th, 135th, 267th	Calhoun, DeWitt, Goliad, Jackson, Refugio & Victoria
64th, 242nd	Castro, Hale & Swisher
34th, 205th, 210th	Culberson, El Paso & Hudspeth

17. The above counties contain some 13 judicial districts, and a hispanic population of 42.77%; however, only 1 or 7.7% of the 13 district judges is hispanic.

18. Upon information and belief, if single members districts were drawn in the above named areas, the minority group is sufficiently large and compact so that districts could be drawn in which minorities would constitute a majority.

19. Upon information and believe, in the above named areas minorities are politically cohesive.

20. Upon information and belief in the above cited areas, the white majority votes sufficiently as a bloc to enable it -- in the absence of special circumstances, such as the minority candidate running unopposed -- usually to defeat the minority's preferred candidate.

21. Upon information and belief, in the above challenged areas, the at large election scheme interacts with social and historical conditions to cause an in-equality in the opportunity of hispanic or black voters to elect representatives of their choice as compared to white voters.

22. Depending upon the evidence developed in discovery, some of the above named areas may be deleted and some unnamed areas may be added.

VI. Causes of Action

23. The present at large scheme of electing district judges, intentionally created and/or maintained with a discriminatory purpose, violates the civil rights of plaintiffs by diluting their votes.

24. The present at large scheme of electing district judges results in a denial or abridgement of the right to vote

of the plaintiffs on account of their race or color in that the political processes leading to nomination or election of district judges are not equally open to participation by plaintiffs in that they have less opportunity than other members of the electorate to elect candidates of their choice.

VII. Immunities

25. Qualified and absolute immunity do not protect the defendants because plaintiffs seek only injunctive and declaratory relief and attorneys' fees. Furthermore, absolute immunity does not protect defendants because they do not act in any of the capacities which receive immunity at common law. The defendants are not entitled to Eleventh Amendment immunity because plaintiffs seek only injunctive and declaratory relief and attorneys' fees.

VIII. Equities

26. Plaintiffs have no adequate remedy at law other than the judicial relief sought herein, and unless the defendants are enjoined from continuing the present at large scheme, plaintiffs will be irreparably harmed by the continuing violation of their statutory and constitutional

rights. The illegal and unconstitutional conditions complained of preclude the adoption of remedial provisions by the electorate. The present electoral scheme is without any legitimate or compelling governmental interest and is arbitrarily and capriciously cancels, dilutes and minimizes the force and effect of the plaintiffs' voting strength.

IX. Attorneys' Fees

27. In accordance with 42 U.S.C. Section 1973-1(e) and 1988, plaintiffs are entitled to recover reasonable attorneys' fees as part of their costs.

X. Prayer

28. WHEREFORE, premises considered, plaintiffs pray that defendants be cited to appear and answer herein; that a declaratory judgment be issued finding that the existing method of electing district judges is unconstitutional and/or illegal, null and void; that the defendants be permanently enjoined from calling, holding, su[illegible]vising or certifying any further elections for district judges under the present at large scheme; that the Court order that district judges in the targeted counties be elected in a system which

contains single member districts; adjudge all costs against defendants, including reasonable attorneys' fees; retain jurisdiction to render any and all further orders that this Court may from time to time deem appropriate; and grant any and all further relief both at law and in equity to which these plaintiffs may show themselves to be entitled.

Respectfully submitted,

[Caption]

DEFENDANT HARRIS COUNTY DISTRICT JUDGE SHAROLYN WOOD'S ORIGINAL ANSWER TO *HOUSTON LAWYERS' ASSOCIATION*

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendants Sharolyn Wood, Judge of the 127th Judicial District Court of Harris County, Texas ("Wood") and, subject to her Motion to Dismiss and Motion for More Definite Statement, files this her Original Answer in response to the Complaint in Intervention of the Houston Lawyers' Association, Alice Bonner ("Bonner"), Weldon Berry ("Berry"), Francis Williams ("Williams"), Rev. William Lawson ("Lawson"), Deloyd T. Parker ("Parker"), and Bennie McGinty ("McGinty") (hereinafter collectively referred to as the "Houston Lawyers' Association Plaintiffs") in the above referenced cause of action as follows:

I.

BACKGROUND

1.1. This is a suit originally brought by the League of Latin American Citizens ("LULAC") and certain individual Mexican-American and black citizens of Texas seeking to

declare illegal and/or unconstitutional and null and void in certain targeted counties the State of Texas' constitutionally and legislatively mandated system of electing state district judges at large.

1.2. The Texas Constitution Article V, § 7 provides in relevant part that the state shall be divded into judicial districts with each district having one or more judges as provided by law or by the Texas Constitution. The section also provides that each district judge shall be elected by the qualified voters at a general election and shall be a citizen of the state and shall have been a practicing lawyer in the state or a judge of a state court for four years and shall have been a resident of the district for two years and shall agree to reside in the district during his term of office.

1.3. In 1985, the Texas Constitution was amended by the addition of a new section, article V, § 7a, which provides for the reapportionment of Texas judicial election districts. That section provides that no judicial district may be established smaller than an entire county except by majority vote of the voters at a general election. Tex.

Const. of 1876, art. V, § 7a(i).

1.4. Pursuant to article V, the Texas legislature has enacted a comprehensive body of statutes governing the formation and function of judicial districts. The policy underlying the establishment of judicial districts is expressly stated in those statutes, to wit:

> It is the policy of the state that the administration of justice shall be prompt and efficient and that, for this purpose, the judicial districts of the state shall be reapportioned as provided by this subchapter so that the district courts of various judicial districts have judicial burdens that are as nearly equal as possible.

Tex. Gov't Code § 24.945.

1.5. To promote the ends of fairness and efficiency, all the district courts in a county with more than one judicial district are accorded concurrent jurisdiction and courts in those districts are permitted to equalize their dockets. Tex. Gov't Code §§ 24.950, 24.951.

1.6. In addition, the Texas Government Code sets out rules and conditions for the reapportionment of judicial

districts.[1] Those statutes expressly require that the

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[1] The Tex. Gov't Code provides,

> (a) The reapportionment of the judicial districts of the state by the board is subject to the rules and conditions provided by Subsections (b)-(d).
>
> (b) Reapportionment of the judicial districts shall be made on a determination of fact by the board that the reapportionment will best promote the efficiency and promptness of the administration of justice in the state by equalizing as nearly as possible the judicial burdens of the district courts of the various judicial districts. In determining the reapportionment that best promotes the efficiency and promptness of the administration of justice, the board shall consider:
>
> (1) the numbers and types of cases filed in the district courts of the counties to be affected by the reapportionment;
>
> (2) the numbers of types of cases disposed of by dismissal or judgment in the district courts of those counties;
>
> (3) the numbers and types of cases pending in the district courts of those counties;
>
> (4) the number of district courts in those counties;
>
> (5) the population of the counties;
>
> (6) the area to be covered by

a judicial district; and

(7) the actual growth or decline of population and district court case load in the counties to be affected.

(c) Each judicial district affected by a reapportionemnt must contain one or more complete counties except as provided by this section. More than one judicial district may contain the same county or counties. If more than one county is contained in a judicial district, the territory of the judicial district must be contiguous.

(d) Subject to the other rules and conditions in this section, a judicial district in a reapportionment under this subchapter may:

(1) be enlarged in territory by including an additional county or counties in the district, but a county having a population as large or larger than the population of the judicial district being reapportioned may not be added to the judicial district;

(2) be decreased in territory by removing a county or counties from the district;

(3) have both a county or counties added to the district and a county or counties removed from it; or

(4) be removed to another location in the state so that the district contains an entirely different county or counties.

(e) The legislature, the Judicial Districts

reapportionment of state judicial election districts be made on that basis which "will best promote the efficiency and promptness of the administration of justice in the state by equalizing as nearly as possible the judicial burdens of the district courts of the various judicial districts." The Code further sets out the factors to be considered in determining which reapportionment best promotes the efficiency and promptness of the administration of justice.

1.7. Not only are both race and racial discrimination entirely alien to Texas' judicial district reapportionment policy and the factors enumerated under it, but both the statement of policy itself and the enumerated factors to be considered make it absolutely clear that the fundamental state

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Board, or the Legislative Redistricting Board may not redistrict the judicial districts to provide for any judicial district smaller in size than an entire county except as provided by this subsection. Judicial districts smaller in size than the entire county may be created subsequent to a general election in which a majority of the persons voting on the proposition adopt the proposition "to allow the division of _____ County into judicial districts composed of parts of _____ County." A redistricting plan may not be proposed or adopted by the legislature, the Judicial Districts Board, or the Legislative Redistricting Board in anticipation of a future action by the voters of any county.

policy that determines the apportionment of judicial districts is the vitally important policy of promoting efficiency, promptness, and fundamental fairness in the administration of justice in Texas. Plaintiffs, however, would simply disregard this compelling state policy in the interests of increasing the numbers of protected minority class members in the state judiciary. Indeed, Plaintiffs expressly state that "the present electoral scheme is without any legitimate or compelling governmental interest and it arbitrarily and capriciously cancels, dilutes, and minimizes the force and effect of the Plaintiffs' voting strength." Plaintiffs' First Amended Complaint at ¶ 31.

1.8. Despite their claim that the present judicial election scheme is without any legitimate foundation, Plaintiffs state no claim against Texas' judicial election scheme in general. Rather, they complain that Texas' state judicial districts were established and/or are maintained in certain target counties with the intent to discriminate against minorities protected by § 2 of the Voting Rights Act, and that the district judge election scheme in those counties

dilutes the votes of blacks and Hispanics and thereby violates the Voting Rights Act, 42 U.S.A. §§ 1971 and 1973, the Civil Rights Act, U.S.C. §§ 1983 and 1988, and the fourteenth and fifteenth amendments to the United States Constitution. Plaintiffs' Complaint is essentially that when the target counties, which are widely scattered over the State of Texas, are considered as an aggregate, the proportional representation of black and/or Hispanic judges in those counties is less than the proportion of minorities in the gross population of those aggregated counties.

1.9. This suit initially challenged the judicial election system in 47 Texas counties.[2] By agreement between Plaintiffs and the State of Texas, approved by the Court on oral motion of the parties at a hearing on various motions to intervene on February 27, 1989, the number of targeted

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[2] The counties targeted initially were Harris, Dallas, Ector, McLennan, Tarrant, Midland, Travis, Jefferson, Galveston, Bell, Lubbock, Fort Bend, Brazos, Brazoria, Taylor, Wichita, Angelina, Gregg, Smith, Atascosa, Frio, Karnes, LaSalle, Wilson, Aransas, Bee, Live Oak, McMullen, San Patricio, Caldwell, Comal, Hays, Calhoun, DeWitt, Goliad, Jackson, Refugio, Victoria, Castro, Hale, Swisher, Culberson, El Paso, and Hudspeth.

counties was reduced to 15. These counties are Harris, Dallas, Ector, McLennan, Tarrant, Midland, Travis, Jefferson, Galveston, Lubbock, Fort Bend, Smith, Culberson, El Paso, and Hudspeth.

II.

DEFENSES

2.1. Defendant Wood is without knowledge as to whether the individual Houston Lawyers' Association Plaintiffs are black registered voters as alleged in paragraph 1 of the Houston Lawyers' Association Plaintiffs' Complaint in Intervention (the "Houston Lawyers' Association Plaintiffs' Complaint") and, therefore, denies the same.

2.2. Defendant Wood specifically denies all other allegations in paragraph 1 of the Houston Lawyers' Association Plaintiffs' Complaint. In particular, she denies that the at large judicial electoral districts scheme as currently constituted denies black citizens an equal opportunity to elect the candidates of their choice in Harris County. She also specifically denies that Art. 5, § 7a(i) of the Texas Constitution was adopted with the intention, or has

been maintained for the purpose of, minimizing the voting strength of black voters.

2.3. Defendant Wood admits that this Court has jurisdiction over this case under 28 U.S.C. §§ 1331 and 1343. However, she denies that the Court has jurisdiction pursuant to 42 U.S.C. § 1973j(f), since that section provides jurisdiction only over causes of action brought under § 1973j to impose civil and criminal penalties on persons who violate various voting rights statutes, and Plaintiffs have not brought any action under § 1973j nor does § 1973j provide for any private cause of action.

2.4. Defendant Wood is without information sufficient to form a belief as to the characterization of the Houston Lawyers' Association in paragraph 4 of Houston Lawyers' Association Plaintiff's Complaint and the race and status of the individual Houston Lawyers' Association Plaintiffs as alleged in paragraph 5 through 10 and therefore denies them.

2.5. Defendant Clements has been dropped from this suit by Court order.

2.6. Defendant Wood is without knowledge or

information sufficient to form a belief as to the truth of the averments in paragraphs 11 through 14 of Houston Lawyers' Association Plaintiffs' Complaint, except to the extent that those averments are admitted by the State Defendants. Defendant Wood denies, however, that the Judicial Districts Board may reapportion the judicial districts of Texas "as the necessity arises in its judgment" without regard to any other factors.

2.7. Defendant Wood makes no averments except with respect to Harris County. Insofar as Harris County is concerned, Defendant Wood is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 15 through 35 of the Complaint to which a responsive pleading may be required and therefore denies them.

2.8. In addition, in response to paragraph 20 of the Complaint, Defendant Wood specifically denies that elections in Harris County in particular are characterized by significant racial bloc voting.

2.9. Defendant Wood also specifically denies that the

State of Texas has used or continues to use unusually large election districts in Harris County; and she denies the implication in paragraph 21 of the Houston Lawyers' Association Plaintiffs' Complaint that the size of the judicial election districts in Harris County is in any way determined or influenced by the number of minority voters in the area.

2.10. Defendant Wood also specifically denies the allegations in paragraph 22 of the Houston Lawyers' Association Plaintiffs' Complaint that the judicial election process is not equally open to blacks, insofar as those allegations refer to Harris County.

2.11. Defendant Wood further specifically denies the allegations in paragraph 35 of the Houston Lawyers' Association Plaintiffs' Complaint that black judicial candidates in Harris County are usually defeated by a bloc voting white majority.

2.12. Defendant Wood denies the allegations incorporated by reference in paragraph 36 of the Houston Lawyers' Association Plaintiffs' Complaint insofar as a responsive pleading is required; and she refers the Houston

Lawyers' Association Plaintiffs to her First Amended Answer to Plaintiffs' First Amended Complaint.

2.13. Defendant Wood admits the allegations in paragraph 37 of the Houston Lawyers' Association Plaintiffs' Complaint that Art. 5, § 7 of the Texas Constitution of 1876 was amended in 1985 to include § 7(a), but she denies that the snippet quoted is meaningful by itself.

2.14. Defendant Wood admits the averments in paragraph 38 insofar as any responsive pleading is required.

2.15. Defendant Wood is without information to permit her to respond to the allegations in paragraphs 39 and 41 and therfore denies them.

2.16. In response to paragraphs 40 and 42 of the Complaint, and with respect to Harris County alone, Defendant Wood specifically denies that the present at large scheme of electing district judges violates the civil rights of the Plaintiffs by diluting their votes. She further denies that the present at large election scheme results in a denial or abridgement of the right of the Plaintiffs to vote on account of their race or color in that they have less opportunity than

other members of the electorate to elect candidates of their choice as alleged in paragraphs 22 and 48 of Houston Lawyers' Association Plaintiffs' Complaint. Intervenor Wood asserts that such condition or effect does not exist in Harris County with respect to the election of district judges. She also asserts that no violation of the Voting Rights Act or of the United States Constitution has occurred within Harris County with respect to the current method or scheme of electing district judges and that, therefore, no remedy is required or justified in order to alleviate a problem which does not exist within this county.

2.17. No responsive pleading is required to the Houston Lawyers' Association Plaintiffs' allegations regarding intervention in paragraphs 43 and 44 of their Complaint.

2.18. Defendant Wood denies the allegations in paragraphs 45 through 48 of the Houston Lawyers' Association Plaintiffs' Complaint. She specifically denies in addition, and with respect to Harris County alone, that the present districting scheme was adopted or has been

maintained with the intention of minimizing the political strength of black voters, as alleged in paragraph 46; and she specifically denies that the present scheme has the result of making the political process in Harris County less open to black voters.

II.

AFFIRMATIVE DEFENSES

A. *Plaintiffs Lack Standing to Bring Their Claims (a) in Twelve of the Fifteen Target Counties and (b) in Each Already Identified Future Minority District in Which No Plaintiff Resides.*

3.1. Defendant Wood hereby incorporates by reference the allegations heretofore made in paragraphs 1.1 through 2.18 as though fully restated.

3.2. Defendant Wood still urging and relying on the matters herein alleged, further alleges by way of affirmative defense that Plaintiffs lack standing to bring their claims of vote dilution in twelve of the fifteen counties which are targets of this suit in that no individual Plaintiff in this suit is a resident of any county except Harris, Midland, and Dallas. Thus, no decision of the Court regarding the

application of Texas' judicial district election scheme in any other county will affect any Plaintiff in this case. When no Plaintiffs will be affected by a decision regarding a claim, the Court lacks jurisdiction over that claim. Hence all claims as to the twelve unrepresented counties should be dismissed and the remaining case severed by county and transferred to the Federal District Court in such county.

3.3. In the alternative, the Court should join as indispensable parties individual voters in each target county as well as the district judges of those counties.

3.4. In addition, with respect to each of the eleven proposed judicial districts Plaintiffs have already identified in which no named Plaintiff is a resident, Plaintiffs lack standing to assert any claims.

B. *State Judicial Elections Are Beyond the Scope of the Voting Rights Act.*

4.1. Defendant Wood hereby incorporates by reference the allegations heretofore made in paragraphs 1.1 through 3.4 as though fully restated.

4.2. Defendant Wood, still urging and relying on the

matters herein alleged, further alleges by way of affirmative defense that state judicial elections are beyond the scope of the Voting Rights Act in that the plain language of § 2 of the Voting Rights Act, as amended in 1982 and codified at 42 U.S.C. § 1973(b), limits the scope of the Act to elections of "representatives," not judges; and she alleges that the Voting Rights Act cannot be properly understood to require that judges, who serve the people rather than represent them, must be elected from single member districts drawn on racial lines, as Plaintiffs would require, in order to correct for the dilution of the votes of protected minority class members in multi-member judicial districts.

C. *The Voting Rights Act, as Amended, is Unconstitutional as Applied to Judicial Elections.*

5.1. Defendant Wood hereby incorporates by reference the allegations heretofore made in paragraphs 1.1 through 4.2 as though fully restated.

5.2. Defendant Wood, still urging and relying on the matters herein alleged, would further alleges by way of affirmative defense that the Voting Rights Act, as amended

in 1982, is unconstitutional as applied to judicial elections.

5.3. Intentional discrimination is an essential element of a violation of the fourteenth and fifteenth amendments to the United States Constitution. The Voting Rights Act derives its constitutional validity from those two amendments and, in particular, from § 5 of the fourteenth amendment and § 2 of the fifteenth amendment, which grant to Congress the power to enforce the provisions of those amendments. Following a holding by the Supreme Court that the Voting Rights Act was violated only by purposeful discrimination, Congress amended § 2 of the Voting Rights Act to make it clear that a violation could be proved by showing discriminatory effect alone without showing a discriminatory purpose on the part of the state in adopting or maintaining a contested electoral mechanism.

5.4. The 1982 amendments to § 2 of the Voting Rights Act transgress the constitutional limitations within which Congress has the authority to interfere with state regulation of the local electoral process. Although Congress has the power under the fourteenth and fifteenth amendments

to pass statutes prohibiting conduct which does not rise to the level of a constitutional violation, it may not infringe any provision of the Constitution in doing so. Yet the Voting Rights Act, at least as applied to judicial elections, violates the principle of separation of powers underlying the United States and the Texas Constitution and the Equal Protection Clause of the fourteenth amendment in order to extend protections to protected minorities which are not themselves required by the Constitution.

5.5. The Equal Protection Clause of the fourteenth amendment to the United States Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Voting Rights Act, as amended in 1982, is, however, expressly designed to force states to adopt measures as remedies for alleged vote dilution that favor protected classes over other classes ad thus deprive members of nonprotected classes of the equal protection of the laws. Since Defendant Wood is not a member of a class protected by the Act, that Act, used to force the restructuring of state judicial election districts in

Harris County, Texas, would unconstitutionally deprive Defendant Wood of the equal protection of the laws.

5.6. Section 2 of the Voting Rights Act of 1965, as originally promulgated and enforced prior to 1982, did not expressly favor protected classes. The Act simply forbade any state or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color. In 1975, the Act was amended to extend its protections to members of language minority groups.[3] In 1982 it was amended once again; and this time its protections were expressly limited to "members of a protected class."[4]

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[3] As amended in 1975, the § 2 of the Voting Rights Act provided:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title [i.e., guarantees protecting language minority groups].

[4] Section 2 of the Voting Rights Act, as amended in 1982, provides:

5.7. Since the protections of § 2 of the Voting Rights Act as amended in 1982 are expressly extended to protected classes and not to others, the Voting Rights Act as amended is a race-based Act designed to further remedial goals. Therefore, its provisions are highly suspect and are to be treated by the courts with strict scrutiny so that they may

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(a) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of protected class elected in numbers equal to their proportion in the population.

determine whether its classifications are in fact motivated by racial politics, rather than by a more benign purpose, and whether those classifications carry the danger of leading to a politics of racial hostility.

5.8. Strict scrutiny reveals that the protections of § 2 of the Voting Rights Act, as amended can be invoked in a vote dilution case, such as the present case, only by a protected minority which is geographically insular and politically cohesive and votes as a racial block against a white majority, which also votes as a racial block and usually manages to defeat candidates preferred by the protected minority. In that situation -- and in that situation only -- the Voting Rights Act comes alive to ensure that the protected class will be allowed to elect the representatives of its choice, even if that protected class is in the minority in the challenged election district, and even if the challenge district's boundaries have been drawn for compelling state reasons having nothing to do with race. However, the Voting Rights Act does not protect the rights of any class of people other than those designated by the Act as protected

classes -- even if the unprotected class finds itself in the precise circumstances which would invoke the Act if the class were protected, namely, in a situation where the unprotected class constitutes a minority of voters within a given election district -- a situation which, on information and belief, prevails in much of Southern Texas.

5.9. Defendant Wood makes no allegations concerning the constitutionality of the Voting Rights Act in regard to matters other than judicial elections. However, in regard to judicial elections, Section 2 as amended is a preferential Act which, in the name of preventing discrimination, (a) is actually a device for encouraging and rewarding racial politics and implicitly the notion of race-conscious justice by forcing states to adopt measures to remedy "vote dilution" and (b) by ignoring the principal of "one man-one vote," to guarantee a disproportionally large number of minority judges committed to race-conscious justice. Both concepts would deprive nonprotected classes of the equal protection of the law. That Act therefore fails to meet the test of strict scrutiny and flagrantly violates the equal protection clause of

the Constitution.

5.10. Second, the Voting Rights Act, when extended to judicial elections, obliterates the distinction between legislators -- who represent the people and are properly representatives of the voters' personal interests (such as the voters' desire to have the interests of their racial or language group put foremost) -- and judges -- who serve the interests of all the people impartially and in the proper exercise of whose function the desires of the voters to promote racial identification have no proper role at all. When the Voting Rights Act is applied to judges, the proper distinction between the legislative and judicial function is sacrificed to the promotion of racial interests and any state in which it is so used is denied the opportunity to maintain the separation of the legislative and judicial function which is fundamental to the United States Constitution itself and to all state constitutions, including the Texas Constitution.

WHEREFORE, Harris County District Judge Sharolyn Wood respectfully requests that the Houston Lawyers' Association Plaintiffs' cause of action be dismissed with

respect to the system for electing district judges within Harris County and that judgment be entered in her favor and that she recover all other relief, both general and special, in law and in equity, to which she may show herself justly entitled.

III.

DEFENDANT WOOD'S COUNTERCLAIM

Harris County District Judge Sharolyn Wood, Defendant in the above-captioned action, now acting as and designated Counter-Plaintiff, complains of the Houston Lawyers' Association Plaintiffs, now designated Counter-Defendants, and for cause of action would show by way of counterclaim the following:

6.1. Counter-Plaintiff incorporates by reference the allegations in paragraphs 1.1 through 5.10 as though fully restated.

6.2. In connection with the controversy which is the subject of this cause of action, Counter-Defendants rely integrally on the constitutionality of the Voting Rights Act of 1965 as amended in 1982 and codified at 42 U.S.C.A. §

1973 (West Supp. 1988). Title 28 §§ 2201 and 2202 permit any interested party to seek a declaration of his rights and other legal relations in a case of actual controversy within its jurisdiction and to seek further necessary or proper relief based on a declaratory judgment. Therefore Counter-Plaintiff seeks a declaration of her rights vis-a-vis the amended Voting Rights Act under the United States Constitution.

6.3. For the reasons set forth above in paragraphs 4.1 through 4.2 and hereby incorporated by reference, Counter-Plaintiff alleges that state judicial elections are beyond the scope of the Voting Rights Act of 1965.

6.4. Alternatively, and still urging and relying upon the claim set forth herein, Counter-Plaintiff further alleges that, for the reasons set forth in paragraphs 5.1 through 5.10 and hereby incorporated by reference, the Voting Rights Act as amended in 1982 is uncosntitutional as applied to judicial elections. It deprives non-protected classes of the equal protection of the law, in violation of the fourteenth amendment; and in addition, it deprives citizens of those

states in which it is invoked to force the redistricting of state judicial election districts of their right to a form of government in which the function of the judiciary as servants of the people is kept separate from the function of the legislature as representatives of the people. More specifically, its application in the ways sought by Plaintiffs would deprive Defendant Wood of her constitutional rights.

6.5. In that she seeks a declaration of her constitutional rights, Defendant Wood alleges that she is entitled to court costs and attorney's fees.

WHEREFORE, Counter-Plaintiff Wood respectfully prays that the Court will grant her relief as follows:

1. Declare that the Voting Rights Act of 1965, as amended in 1982, does not apply to judicial elections; or, alternatively,

2. Declare that the Voting Rights Act of 1965, as amended in 1982, is unconstitutional as applied to judicial elections; and

3. Dismiss all of Plaintiffs' claims; and

4. Award Counter-Plaintiff her just costs and

attorney's fees pursuant to 28 U.S.C. § 2202 and 42 U.S.C. § 1988; and

5. Award Counter-Plaintiff such other and further relief in law and in equity to which she may show herself to be justly entitled.

Respectfully submitted,

PORTER & CLEMENTS

By: */s/ J. Eugene Clements*
[Caption]

HARRIS COUNTY DISTRICT JUDGE SHAROLYN WOOD'S FIRST AMENDED ORIGINAL ANSWER AND COUNTERCLAIM TO PLAINTIFFS LULAC, ET AL.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Sharolyn Wood, Judge of the 127th Judicial District Court of Harris County, Texas ("Wood") and, subject to her Motion to Dismiss and Motion for More Definite Statement, files this her First Amended Original Answer in response to the Plaintiffs' First Amended Complaint in the above-referenced cause of action as follows:

I.

BACKGROUND

1.1. This is a suit originally brought by the League of Latin American Citizens ("LULAC") and certain individual Mexican-American and black citizens of Texas seeking to declare illegal and/or unconstitutional and null and void in certain targeted counties the State of Texas' constitutionally and legislatively mandated system of electing state district judges at large.

1.2. The Texas Constitution Article V, § 7 provides in relevant part that the state shall be divided into judicial districts with each district having one or more judges as provided by law or by the Texas Constitution. The section also provides that each district judge shall be elected by the qualified voters at a general election and shall be a citizen of the state and shall have been a practicing lawyer in the state or a judge of a state court for four years and shall have been a resident of the district for two years and shall agree to reside in the district during his term of office.

1.3. In 1985, the Texas Constitution was amended by the addition of a new section, article V, § 7a, which provides for the reapportionment of Texas judicial election districts. That section provides that no judicial district may be established smaller than an entire county except by majority vote of the voters at a general election. Tex. Const. of 1876, art. V, § 7a(i).

1.4. Pursuant to article V, the Texas legislature has enacted a comprehensive body of statutes governing the formation and function of judicial districts. The policy

underlying the establishment of judicial districts is expressly stated in those statutes, to wit:

> It is the policy of the state that the administration of justice shall be prompt and efficient and that, for this purpose, the judicial districts of the state shall be reapportioned as provided by this subchapter so that the district courts of various judicial districts have judicial burdens that are as nearly equal as possible.

Tex. Gov't Code § 24.945.

1.5. To promote the ends of fairness and efficiency, all the district courts in a county with more than one judicial district are accorded concurrent jurisdiction and courts in those districts are permitted to equalize their dockets. Tex. Gov't Code §§ 24.950, 24.951.

1.6. In addition, the Texas Government Code sets out rules and conditions for the reapportionment of judicial districts.[1] Those statutes expressly require that the

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[1] The Tex. Gov't Code provides,

> (a) The reapportionment of the judicial districts of the state by the board is subject to the rules and conditions provided by Subsection (b)-(d).
>
> (b) Reapportionment of the judicial districts shall be made on a determination of fact by the board that the reapportionment will best promote the efficiency and promptness of the administration of justice in the state by equalizing as nearly as possible the judicial burdens of the district courts of the various judicial districts. In determining the repportionment that best promotes the efficiency and promptness of the administration of justice, the board shall consider:
>
> (1) the numbers and types of cases filed in the district courts of the counties to be affected by the reapportionment;
>
> (2) the numbers and types of cases disposed of by dismissal or judgment in the district courts of those counties;
>
> (3) the numbers and types of cases pending in the district courts of those counties;
>
> (4) the number of district courts in those counties;
>
> (5) the population of the counties;
>
> (6) the area to be covered by a judicial district; and
>
> (7) the actual growth or decline or population and district court case load in the counties to be affected.
>
> (c) Each judicial district affected by a reapportionment must contain one or more complete counties except as provided by this section. More than one judicial district may contain the same county or counties. If more

than one county is contained in a judicial district, the territory of the judicial district must be contiguous.

(d) Subject to the other rules and conditions in this section, a judicial district in a reapportionment under this subchapter may:

(1) be enlarged in territory by including an additional county or counties in the district, but a county having a population as large or larger than the population of the judicial district being reapportioned may not be added to the judicial district;

(2) be decreased in territory by removing a county or counties from the district;

(3) have both a county or counties added to the district and a county or counties removed from it; or

(4) be removed to another location in the state so that the district contains an entirely different county or counties.

(e) The legislature, the Judicial Districts Board, or the Legislative Redistricting Board may not redistrict the judicial districts to provide for any judicial district smaller in size than an entire county except as provided by this subsection. Judicial districts smaller in size than the entire county may be created subsequent to a general election in which a majority of the persons voting on the proposition adopt the proposition "to allow the division of _____ County into judicial districts composed of parts of _____ County." A redistricting plan

reapportionment of state judicial election districts be made on that basis which "will best promote the efficiency and promptness of the administrtation of justice in the state by equalizing as nearly as possible the judicial burdens of the district courts of the various judicial districts." The Code further sets out the factors to be considered in determining which reapportionment best promotes the efficiency and promptness of the administration of justice.

1.7. Not only are both race and racial discrimination entirely alien to Texas' judicial district reapportionment policy and the factors enumerated under it, but both the statement of policy itself and the enumerated factors to be considered make it absolutely clear that the fundamental state policy that determines the apportionment of judicial districts is the vitally important policy of promoting efficiency, promptness, and fundamental fairness in the administration of justice in Texas. Plaintiffs, however, would simply

may not be proposed or adopted by the legislature, the Judicial Districts Board, or the Legislative Redistricting Board in anticipation of a future action by the voters of any county.

disregard this compelling state policy in the interests of increasing the numbers of protected minority class members in the state judiciary. Indeed, Plaintiffs expressly state that "the present electoral scheme is without any legitimate or compelling governmental interest and it arbitrarily and capriciously cancels, dilutes, and minimizes the force and effect of the Plaintiffs' voting strength." Plaintiffs' First Amended Complaint at ¶ 31.

1.8. Despite their claim that the present judicial election scheme is without any legitimate foundation, Plaintiffs state no claim against Texas' judicial election scheme in general. Rather, they complain that Texas' state judicial districts were established and/or are maintained in certain target counties with the intent to discriminate against minorities protected by § 2 of the Voting Rights Act, and that the district judge election scheme in those counties dilutes the votes of blacks and Hispanics and thereby violates the Voting Rights Act, 42 U.S.A. §§ 1971 and 1973, the Civil Rights Act, U.S.C. §§ 1983 and 1988, and the fourteenth and fifteenth amendments to the United States

Constitution. Plaintiffs' Complaint is essentially that when the target counties, which are widely scattered over the State of Texas, are considered as an aggregate, the proportional representation of black and/or Hispanic judges in those counties is less than the proportion of minorities in the gross population of those aggregated counties.

1.9. This suit initially challenged the judicial election system in 47 Texas counties.[2] By agreement between Plaintiffs and the State of Texas, approved by the Court on oral motion of the parties at a hearing on various motions to intervene on February 27, 1989, the number of targeted counties was reduced to 15. These counties are Harris, Dallas, Ector, McLennan, Tarrant, Midland, Travis, Jefferson, Galveston, Lubbock, Fort Bend, Smith, Culberson, El Paso, and Hudspeth.

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[2] The counties targeted initially were Harris, Dallas, Ector, McLennan, Tarrant, Midland, Travis, Jefferson, Galveston, Bell, Lubbock, Fort Bend, Brazos, Brazoria, Taylor, Wichita, Angelina, Gregg, Smith, Atascosa, Frio, Karnes, LaSalle, Wilson, Aransas, Bee, Live Oak, McMullen, San Patricio, Caldwell, Comal, Hays, Calhoun, DeWitt, Goliad, Jackson, Refugio, Victoria, Castro, Hale, Swisher, Culberson, El Paso, and Hudspeth.

II.

DEFENSES

2.1. Defendant Wood acknowledges that the League of United Latin American Citizens ("LULAC") consists of statewide and local organizations composed primarily of United States citizens of Mexican descent as alleged in paragraphs 1, 4 and 5 of Plaintiffs' First Amended Complaint (the "Complaint"). However, she is without knowledge or information sufficient to form a belief as to the truth of the averments in the first paragraph of the Complaint about the citizenship and race of Plaintiffs Christina Moreno, Aquilla Watson, James Fuller, and Judge Matthew W. Plummer, Sr.

2.2. Paragraph 2 of the Complaint contains only averments to which no responsive pleading is required; however, to the extent that it is construed to contain averments requiring a responsive pleading, Defendant denies them.

2.3 To the extent that paragraph 3 of the Complaint is construed to contain averments to which responsive

pleadings are required, Defendant Wood admits the averment in paragraph 3 that the Court has jurisdiction over this action. She is without knowledge or information sufficient to form a belief as to whether each of the cited statutory provisions provides sufficient jurisdiction.

2.4. Defendant Wood is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 4, 5, 6, 7, 8 and 9 of the Complaint. She is without knowledge or information sufficient to form a belief as to the averments in paragraph 10, except to the extent that those averments are admitted by the State Defendants.

2.5. Defendant Wood admits the averments in paragraph 11 and 12 of the Complaint.

2.6. Defendant Wood is without knowledge or information sufficient to form a belief as to the truth of the averments in the remaining paragraphs, 13-32, of the Complaint to which a responsive pleading may be required and therefore denies them.

2.7. In addition, in response to paragraph 26 of the

Complaint, Defendant Wood specifically denies that the at large judicial election system causes an inequality in the opportunity of black or Hispanic voters to elect representatives of their choice, since state district judges are not representatives of the electorate.

2.8. Defendant Wood makes no contention or assertions regarding any other county of the state except Harris County. However, in response to paragraphs 28 and 29 of the Complaint, and with respect to Harris County alone, Defendant Wood specifically denies that the present at large scheme of electing district judges violates the civil rights of the Plaintiffs by diluting their votes. She further denies that the present at large election scheme results in a denial or abridgement of the right of the Plaintiffs to vote on account of their race or color in that they have less opportunity than other members of the electorate to elect candidates of their choice. Defendant Wood asserts that such condition or effect does not exist in Harris County with the respect to the election of district judges. She also asserts that no violation of the Voting Rights Act or of the United

States Constitution has occurred within Harris County with respect to the current method or scheme of electing district judges and that, therefore, no remedy is required or justified in order to alleviate a problem which does not exist within this county.

2.9. Defendant Wood also denies, with respect to paragraph 31 of the Complaint, that Plaintiffs will be irreparably harmed by the continuing violation of their rights in Harris County since she denies that there are any such violations in Harris County. She further denies that the present electoral scheme in Harris County is without any legitimate or compelling government interest.

III.

AFFIRMATIVE DEFENSES

A. *Plaintiffs Lack Standing to Bring Their Claims in Twelve of the Fifteen Target Counties.*

3.1. Defendant Wood hereby incorporates by reference the allegations heretofore made in paragraphs 1.1 through 2.18 as though fully restated.

3.2. Defendant Wood still urging and relying on the

matters herein alleged, further alleges by way of affirmative defense that Plaintiffs lack standing to bring their claims of vote dilution in twelve of the fifteen counties which are targets of this suit in that no individual Plaintiff in this suit is a resident of any county except Harris, Midland, and Dallas. Thus, no decision of the Court regarding the application of Texas' judicial district election scheme in any other county will affect any Plaintiff in this case. When no Plaintiffs will be affected by a decision regarding a claim the Court lacks jurisdiction over that claim. Hence all claims as to the twelve unrepresented counties should be dismissed and the case as to the remaining counties other than Midland should be severed and transferred to such counties.

3.3. In the altnernative, the Court should join as indispensable parties individual voters in each target county as well as the district judges of those counties.

B. *State Judicial Elections Are Beyond the Scope of the Voting Rights Act.*

4.1. Defendant Wood hereby incorporates by reference the allegations heretofore made in paragraphs 1.1

through 3.3 as though fully restated.

4.2. Defendant Wood, still urging and relying on the matters herein alleged, further alleges by way of affirmative defense that state judicial elections are beyond the scope of the Voting Rights Act in that the plain language of § 2 of the Voting Rights Act, as amended in 1982 and codified at 42 U.S.C. § 1973(b), limits the scope of the Act to elections of "representatives," not judges; and she alleges that the Voting Rights Act cannot be properly understood to require that judges, who serve the people rather than represent them, must be elected from single member districts drawn on racial lines, as Plaintiffs would require, in order to correct for the dilution of the votes of protected minority class members in multi-member judicial districts.

C. *The Voting Rights Act, as Amended, is Unconstitutional as Applied to Judicial Elections.*

5.1. Defendant Wood hereby incorporates by reference the allegations heretofore made in paragraphs 1.1 through 4.2 as though fully restated.

5.2. Defendant Wood, still urging and relying on the

matters herein alleged, would further alleges by way of affirmative defense that the Voting Rights Act, as amended in 1982, is unconstitutional as applied to judicial elections.

5.3. Intentional discrimination is an essential element of a violation of the fourteenth and fifteenth amendments to the United States Constitution. The Voting Rights Act derives its constitutional validity from those two amendments and, in particular, from § 5 of the fourteenth amendment and § 2 of the fifteenth amendment, which grant to Congress the power to enforce the provisions of those amendments. Following a holding by the Supreme Court that the Voting Rights Act was violated only by purposeful discrimination, Congress amended § 2 of the Voting Rights Act to make it clear that a violation could be proved by showing discriminatory effect alone without showing a discriminatory purpose on the part of the state in adopting or maintaining a contested electoral mechanism.

5.4. The 1982 amendments to § 2 of the Voting Rights Act transgress the constitutional limitations within which Congress has the authority to interfere with state

regulation of the local electoral process. Although Congress has the power under the fourteenth and fifteenth amendments to pass statutes prohibiting conduct which does not rise to the level of a constitutional violation, it may not infringe any provision of the Constitution in doing so. Yet the Voting Rights Act, at least as applied to judicial elections, violates the principle of separation of powers underlying the United States and the Texas Constitution and the Equal Protection Clause of the fourteenth amendment in order to extend protections to protected minorities which are not themselves required by the Constitution.

5.5. The Equal Protection Clause of the fourteenth amendment to the United States Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Voting Rights Act, as amended in 1982, is, however, expressly designed to force states to adopt measures as remedies for alleged vote dilution that favor protected classes over other classes and thus deprive members of nonprotected classes of the equal protection of the laws. Since Defendant Wood is

not a member of a class protected by the Act, that Act, used to force the restructuring of state judicial election districts in Harris County, Texas, would unconstitutionally deprive Defendant Wood of the equal protection of the laws.

5.6. Section 2 of the Voting Rights Act of 1965, as originally promulgated and enforced prior to 1982, did not expressly favor protected classes. The Act simply forbade any state or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color. In 1975, the Act was amended to extend its protections to members of language minority groups.[3] In 1982 it was amended once again; and this time its protections were expressly limited to "members of a

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[3] As amended in 1975, the § 2 of the Voting Rights Act provided:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title [i.e., guarantees protecting language minority groups].

protected class."[4]

5.7. Since the protections of § 2 of the Voting Rights Act as amended in 1982 are expressly extended to protected classes and not to others, the Voting Rights Act as amended is a race-based Act designed to further remedial goals. Therefore, its provisions are highly suspect and are to be

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[4] Section 2 of the Voting Rights Act, as amended in 1982, provides:

> (a) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of protected class elected in numbers equal to their proportion in the population.

treated by the courts with strict scrutiny so that they may determine whether its classifications are in fact motivated by racial politics, rather than by a more benign purpose, and whether those classifications carry the danger of leading to a politics of racial hostility.

5.8. Strict scrutiny reveals that the protections of § 2 of the Voting Rights Act, as amended, can be invoked in a vote dilution case, such as the present case, only by a protected minority which is geographically insular and politically cohesive and votes as a racial block against a white majority, which also votes as a racial block and usually manages to defeat candidates preferred by the protected minority. In that situation -- and in that situation only -- the Voting Rights Act comes alive to ensure that the protected class will be allowed to elect the representatives of its choice, even if that protected class is in the minority in the challenged election district, and even if the challenged district's boundaries have been drawn for compelling state reasons having nothing to do with race. However, the Voting Rights Act does not protect the rights of any class of

people other than those designated by the Act as protected classes -- even if the unprotected class finds itself in the precise circumstances which would invoke the Act if the class were protected, namely, in a situation where the unprotected class constitutes a minority of voters within a given election district -- a situation which, on information and belief, prevails in much of Southern Texas.

5.9. Defendant Wood makes no allegations concerning the constitutionality of the Voting Rights Act in regard to matters other than judicial elections. However, in regard to judicial elections, Section 2 as amended is a preferential Act which, in the name of preventing discrimination, is (a) actually a device for encouraging and rewarding racial politics and implicitly the notion of race-conscious justice by forcing states to adopt measures to remedy "vote dilution" (b) by ignoring the principle of "one-man, one-vote" to guarantee a disproportionately large number of minority judges committed to such race-conscious justice. Both concepts would deprive nonprotected classes of the equal protection of the law. That Act therefore fails to meet the

test of strict scrutiny and flagrantly violates the equal protection clause of the Constitution.

5.10. Second, the Voting Rights Act, when extended to judicial elections, obliterates the distinction between legislators -- who represent the people and are properly representatives of the voters' personal interests (such as the voters' desire to have the interests of their racial or language group put foremost) -- and judges -- who serve the interests of all the people impartially and in the proper exercise of whose function the desires of the voters to promote racial identification have no proper role at all. When the Voting Rights Act is applied to judges, the proper distinction between the legislative and judicial function is sacrificed to the promotion of racial interests and any state in which it is so used is denied the opportunity to maintain the separation of the legislative and judicial function which is fundamental to the United States Constitution itself and to all state constitutions, including the Texas Constitution.

WHEREFORE, Harris County District Judge Sharolyn Wood respectfully requests that the Houston Lawyers'

Association Plaintiffs' cause of action be dismissed with respect to the system for electing district judges within Harris County and that judgment be entered in her favor and that she recover all other relief, both general and special, in law and in equity, to which she may show herself justly entitled.

III.

DEFENDANT WOOD'S COUNTERCLAIM

Harris County District Judge Sharolyn Wood, Defendant in the above-captioned action, now acting as and designated Counter-Plaintiff, complains of the Plaintiffs, now designated Counter-Defendants, and for cause of action would show by way of counter-claim the following:

6.1. Counter-Plaintiff incorporates by reference the allegations in paragraphs 1.1 through 5.10 as though fully restated.

6.2. In connection with the controversy which is the subject of this cause of action, Counter-Defendants rely integrally on the constitutionality of the Voting Rights Act of 1965 as amended in 1982 and codified at 42 U.S.C.A. §

1973 (West Supp. 1988). Title 28 §§ 2201 and 2202 permit any interested party to seek a declaration of his rights and other legal relations in a case of actual controversy within its jurisdiction and to seek further necessary or proper relief based on a declaratory judgment. Therefore Counter-Plaintiff seeks a declaration of her rights vis-a-vis the amended Voting Rights Act under the United States Constitution.

6.3. For the reasons set forth above in paragraphs 4.1 through 4.2 and hereby incorporated by reference, Counter-Plaintiff alleges that state judicial elections are beyond the scope of the Voting Rights Act of 1965.

6.4. Alternatively, and still urging and relying upon the claim set forth herein, Counter-Plaintiff further alleges that, for the reasons set forth in paragraphs 5.1 through 5.10 and hereby incorporated by reference, the Voting Rights Act as amended in 1982 is unconstitutional as applied to judical elections. It deprives non-protected classes of the equal protection of the law, in violation of the fourteenth amendment; and in addition, it deprives citizens of those

states in which it is invoked to force the redistricting of state judicial election districts of their right to a form of government in which the function of the judiciary as servants of the people is kept separate from the function of the legislature as representatives of the people. More specifically, its application in the way by Plaintiff's would deprive Defendant Wood of her constitutional rights.

6.5. In that she seeks a declaration of her constitutional rights, Defendant Wood is entitled to court costs and attorney's fees.

WHEREFORE, Counter-Plaintiff Wood respectfully prays that the Court will grant her relief as follows:

1. Declare that the Voting Rights Act of 1965, as amended in 1982, does not apply to judicial elections; or, alternatively,

2. Declare that the Voting Rights Act of 1965, as amended in 1982, is unconstitutional as applied to judicial elections; and

3. Dismiss all of Plaintiffs' claims; and

4. Award Counter-Plaintiff her just costs and

attorney's fees pursuant to 28 U.S.C. § 2202 and 42 U.S.C. § 1988; and

5. Award Counter-Plaintiff such other and further relief in law and in equity to which she may show herself to be justly entitled.

Respectfully submitted,

PORTER & CLEMENTS

[Caption]

PLAINTIFFS' SECOND AMENDED COMPLAINT

I. INTRODUCTION

1. The members of Plaintiffs LULAC, LULAC COUNCIL #4434 and LULAC COUNCIL #4451 and the named individual Plaintiffs are Mexican-American and Black citizens of the State of Texas. They bring this action pursuant to 42 U.S.C. 1971, 1973, 1983, 1988 to redress a denial, under color of state law, of rights, privileges or immunities secured to Plaintiffs by the said laws and by the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

2. Plaintiffs seek a declaratory judgment that the existing at large scheme of electing district judges in the target areas of the State of Texas violates Plaintiffs' civil rights in that such method illegally and/or unconstitutionally dilutes the voting strength of Mexican-American and Black electors; Plaintiffs seek a permanent injunction prohibiting the calling, holding, supervising or certifying of any future elections for district judges under the present at large scheme

in the target areas; Plaintiffs seek the formation of a judicial districting scheme by which district judges in the target areas are elected from districts which include single member districts; Plaintiffs seek costs and attorneys' fees.

II. JURISDICTION

3. Jurisdiction is based upon 28 U.S.C. 1343 (3) & (4), upon causes of action arising from 42 U.S.C. 1971, 1973, 1983, & 1988, and under the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Declaratory relief is authorized by 28 U.S.C. 2201 & 2202 and by Rule 57, F.R.C.P.

III. PLAINTIFFS

4. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) is a statewide organization whose members are United States Citizens of Mexican American and black descent, and are resident taxpayers of the State of Texas, and are qualified to vote for district judges in the various counties.

5. LULAC Council No. 4434 is a local organization whose membership is composed of United States Citizens

most of whom are of Mexican-American and Black descent, and are resident taxpayers of the State of Texas, and are qualified to vote for district judges in Midland County. LULAC Council No. 4451 is a local organization whose membership is composed of United States Citizens most of whom are of Mexican-American or Black descent, and are resident taxpayers of the State of Texas, and are qualified to vote for district judges in Ector County.

6. Plaintiff CHRISTINA MORENO is a United States Citizen of Mexican-American descent and is a resident taxpayer of the State of Texas, and is qualified to vote for district judges in Midland County.

7. Plaintiff AQUILLA WATSON is a Black United States Citizen and is a resident taxpayer of the State of Texas, and is qualified to vote for district judges in Midland County.

8. Plaintiff MATTHEW W. PLUMMER, Sr. is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Harris County.

9. Plaintiff JIM CONLEY is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Bexar County.

10. Plaintiff VOLMA OVERTON is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Travis County.

11. Plaintiff WILLARD PEN CONAT is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Fort Bend County.

12. Plaintiff GENE COLINS is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Ector County.

13. Plaintiff AL PRICE is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Jefferson County.

14. Plaintiff THEODORE HOGROBROOKS is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in

Smith County.

15. Plaintiff ERNEST M. DECKARD is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Smith County.

16. Plaintiff MARY ELLEN HICKS is a Black United States Citizen and is a resident taxpayer of the State of Texas; she is qualified to vote for district judges in Tarrant County.

16a. Plaintiff REV. JAMES THOMAS is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Galveston County.

IV. PLAINTIFF INTERVENORS

17. Members of the HOUSTON LAWYERS' ASSOCIATION, ALICE BONNER, WELDON BERRY, FRANCIS WILLIAMS, REV. WILLIAM LAWSON, DELOYD T. PARKER, BENNIE McGINTY, JESSE OLIVER, FRED TINSLEY, JOAN WINN WHITE, and Members of THE BLACK LEGISLATIVE CAUCUS are

Black United States Citizens and are resident taxpayers of the State of Texas; they are qualified to vote for district judges in Texas.

V. DEFENDANTS

18. Defendant JIM MATTOX is the Attorney-General of the State of Texas, and is the chief law enforcement officer of the state and as such, is charged with the responsibility to enforce the laws of the state. Defendant JACK RAINS is the Secretary of State of the State of Texas, and is the chief elections officer of the state and as such, is charged with the responsibility of administering the election laws of the state. Defendants THOMAS R. PHILLIPS, JOHN F. ONION, RON CHAPMAN, THOMAS J. STOVALL, JAMES F. CLAWSON, JR., JOE E KELLY, JOE B. EVINS, SAM M. PAXSON, WELDON KIRK, CHARLES J. MURRAY, RAY D. ANDERSON, LEONARD DAVIS and JOE SPURLOCK, II are members of the JUDICIAL DISTRICTS BOARD created by Art. V. Sec. 7a of the Texas Constitution, and pursuant to Art. 24.941 et. seq. Texas Government Code. They have the

duty to reapportion judicial districts within the State of Texas.

VI. FACTUAL ALLEGATIONS

19. District judges are elected either from judicial districts which are coterminous with and wholly contained within a county, or from judicial districts which are composed of several entire counties.

20. In those counties which contain more than one judicial district, the present election system is an at large scheme with the equivalent of numbered places, the majority rule requirement, and staggered terms.

21. The following counties, which are being challenged in this lawsuit, elect the following number of district judges and, according to the 1980 U.S. Census, contain the following population:

COUNTY	# OF JUDGES ELECTED	TOTAL POP.	S.S. POP. (%)	BLK POP. (%)	CM. %*
Harris	59	2,409,544	369,075(15.3)	473,698(19.7)	35.0
Dallas	36	1,556,549	154,560(9.9)	287,613(18.5)	28.4
Bexar	19	988,800	460,911(46.6)	69,201(7.0)	53.6

Tarrant	23	860,880	67,632(7.9)	101,183(11.8)	19.7
Travis	13	419,335	72,271(17.2)	44,988(10.7)	27.9
Jefferson	8	250,938	10,279(4.1)	70,810(28.2)	32.3
Lubbock	5	211,651	41,428(19.6)	15,780 (7.5)	27.0
Galveston	5	195,940	23,557(12.0)	36,328(18.5)	30.6
McLennan	4	170,755	14,988(8.8)	27,254(16.0)	24.7
Fort Bend	3	130,846	26,656(20.4)	20,420(15.6)	36.0
Smith	4	128,366	4,037(3.1)	28,215(22.0)	25.1
Ector	4	115,374	24,831(21.5)	5,154 (4.5)	26.0
Midland	3	82,636	12,323(14.9)	7,119 (8.6)	23.5
El Paso, Hudspeth, and Culberson**	11	485,942	282,691(58.2)	18,162 (3.7)	61.9

* Combined Minority

** Eight district judges are elected at large within El Paso County; the other three are elected at large within the three county area of El Paso, Hudspeth, and Culberson Counties.

22. The following counties comprise a judicial area that elects three (3) judges at large: EL PASO, CULBERSON, and HUDSPETH. This area contains enough minorities that are sufficiently geographically concentrated that if single member districts were created, at least one of

those districts would be able to elect a minority.

23. The above areas elect 197 district judges. Each area contains enough minorities that are sufficiently geographically concentrated so that if single member districts were created, at least one of those districts in each area would be able to elect a minority.

24. Upon information and belief, in the above named areas minorities are politically cohesive.

25. Upon information and believe in the above cited areas, the white majority votes sufficiently as a block to enable it--in the absence of special circumstances, such as the minority candidate running unopposed--usually to defeat the minority's preferred candidate.

26. Upon information and belief, in the above challenged areas, the at large election scheme interacts with social and historical conditions to cause an inequality in the opportunity of hispanic and/or black voters to elect representatives of their choice as compared to white voters.

27. Upon information and belief, the following are the names of the presently sitting judges' elected from the

above counties:

COURT	JUDGE	COUNTY	VOTING PRECINCT	RACE/ ETHNIC
11th	Mark Davidson	Harris	224	W
55th	Reagan Cartwright	Harris	178	W
61st	Shearn Smith	Harris	**	W
80th	William R. "Bill" Powel	Harris	040	W
113th	Geraldine B. Tennant	Harris	227	W
125th	Don E. Wittig	Harris	118	W
127th	Sharolyn P. Wood	Harris	282	W
129th	Hugo A. Touchy	Harris	385	W
133rd	Lamar McCorkle	Harris	**	W
151st	Alice Oliver Trevathan	Harris	441	W
152nd	Jack O'Neill	Harris	493	W
157th	Felix Salazar, Jr.	Harris	134	H
164th	Pete Solito	Harris	217	W
165th	Ken Harrison	Harris	413	W
174th	George H. Godwin	Harris	015	W
176th	James Brian Rains	Harris	116	W
177th	Miron A. Love	Harris	034	W
178th	William T. "Bill" Harmon	Harris	129	W
179th	J. Mike Wilkinson	Harris	456	W
180th	Patricia R. Lykos	Harris	626	W
182th	Donald K. Shipley	Harris	261	W
183th	Jay W. Burnett	Harris	567	W
184th	Robert N. Burdette	Harris	356	W
185th	Carl Walker, Jr.	Harris	138	B
189th	Richard W. Millard	Harris	056	W
190th	Wyatt H. Heard	Harris	227	W
208th	Thomas H. Routt	Harris	136	B
209th	Michael T. McSpadden	Harris	148	W
215th	Eugene Chambers	Harris	663	W
228th	Ted Poe	Harris	658	W

230th	Joe Kegans	Harris	222	W
232rd	A.D. Azios	Harris	178	H
234th	Ruby K. Sondock	Harris	434	W
245th	Henry G. Schuble	Harris	305	W
246th	John W. Peavy, Jr.	Harris	228	B
247th	Charles Dean Huckabee	Harris	628	W
248th	Woody R. Densen	Harris	034	W
257th	Norman R. Lee	Harris	628	W
262nd	Doug Shaver	Harris	200	W
263rd	Charles J. Hearn	Harris	351	W
269th	W. David West	Harris	219	W
270th	Ann Tyrrell Cochran	Harris	217	W
280th	Melinda Furche Harmon	Harris	129	W
281st	Louis M. Moore	Harris	297	W
295th	Dan Downey	Harris	441	W
308th	Bob W. Robertson	Harris	430	W
309th	John D. Montgomery	Harris	518	W
310th	Allen J. Daggett	Harris	577	W
311th	Bill Elliott	Harris	221	W
312th	Robert S. Webb, III	Harris	200	W
313th	Robert L. Lowery	Harris	371	W
314th	Robert R. Baum	Harris	296	W
315th	Eric G. Andell	Harris	183	W
333rd	Davie L. Wilson	Harris	466	W
334th	Russel T. Lloyd	Harris	316	W
337th	Jim Barr	Harris	432	W
338th	Mary Bacon	Harris	344	W
339th	Norman E. Lanford	Harris	050	W
351st	Lupe Salinas	Harris	115	H
14th	John M. Marshall	Dallas	1174	W
44th	Candace Tyson	Dallas	1203	W
68th	Gary B. Hall	Dallas	1123	W
95th	Joe B. Brown	Dallas	4418	W
101st	Joseph B. Morris	Dallas	1227	W
116th	Frank Andrews	Dallas	1129	W

134th	Anne A. Packer	Dallas	1176	W
160th	Mark Whittington	Dallas	4418	W
162nd	Catherine J. Crier	Dallas	2277	W
191st	David Brooks	Dallas	2242	W
192nd	Merrill L. Hartman	Dallas	2266	W
193rd	Michael J. O'Neill	Dallas	2260	W
194th	Harold Entz, Jr.	Dallas	1185	W
195th	Joe Kendall	Dallas	1171	W
203rd	Thomas B. Thorpe	Dallas	1103	W
204th	Richard D. Mays	Dallas	1148	W
254th	Dee Miller	Dallas	1176	W
255th	Don D. Koons	Dallas	1227	W
256th	Carolyn Wright	Dallas	3302	B
265th	Keith T. Dean	Dallas	1122	W
282nd	Tom Price	Dallas	1202	W
283rd	Jack Hampton	Dallas	2271	W
291st	Gerry Meier	Dallas	1209	W
292nd	Michael E. Keasler	Dallas	4406	W
298th	Adolph Canales	Dallas	1216	H
301st	Robert O'Donnell	Dallas	2203	W
302nd	Frances A. Harris	Dallas	2222	W
303rd	N. Sue Lykes	Dallas	4437	W
304th	Harold C. Gaither, Jr.	Dallas	4516	W
305th	Catherine J. Stayman	Dallas	2253	W
330th	Theo Bedard	Dallas	1185	W
Crim Dist.1	Ron Chapman	Dallas	2241	W
Crim Dist.2	Larry W. Baraka	Dallas	4453	B
Crim Dist.3	Mark Tolle	Dallas	1187	W
Crim Dist.4	Frances J. Maloney	Dallas	1145	W
Crim Dist.5	Pat McDowell	Dallas	1162	W
70th	Gene Ater	Ector	**	W
161st	Tryon D. Lewis	Ector	**	W
244th	Joseph Connally	Ector	**	W

358th	Bill McCoy	Ector	**	W
19th	Bill Logue	McLennan	**	W
54th	George H. Allen	McLennan	**	W
74th	Derwood Johnson	McLennan	**	W
170th	Joe Johnson	McLennan	**	W
17th	Fred W. Davis	Tarrant	2052	W
48th	William L. Hughes, Jr.	Tarrant	2143	W
67th	George Allen Crowley	Tarrant	4095	W
96th	Jeff Walker	Tarrant	3101	W
141st	Dixon W. Holman	Tarrant	2266	W
153rd	Sidney C. Farrar, Jr.	Tarrant	4130	W
213rd	George S. Kredell	Tarrant	2352	W
231st	Maryellen W. Hicks	Tarrant	1104	B
233rd	William H. Brigham	Tarrant	3151	W
236th	Albert L. White,Jr.	Tarrant	1004	W
297th	Everett Young, Jr.	Tarrant	1004	W
322nd	Frank W. Sullivan, III	Tarrant	3151	W
323rd	Scott D. Moore	Tarrant	4343	W
324th	Brian A. Carper	Tarrant	2012	W
325th	Robert L. Wright	Tarrant	1081	W
342nd	Joe Bruce Cunningham	Tarrant	1081	W
348th	Michael D. Schattman	Tarrant	3151	W
352nd	Bruce Auld	Tarrant	3286	W
360th	V. Sue Koenig Stephenson	Tarrant	3289	W
Crim Dist.1	Louis E. Sturns	Tarrant	4203	B
Crim Dist.2	Lee Ann Dauphinot	Tarrant	1189	W
Crim Dist.3	Don Leonard	Tarrant	1004	W
Crim Dist.4	Joe Drago, III.	Tarrant	1022	W

142nd	Pat M. Baskin	Midland	205	W
238th	Van Culp	Midland	307	W
318th	Dean Rucker	Midland	212	W
53rd	Mary Pearl Williams	Travis	237	W
98th	Jeanne Mourer	Travis	207	W
126th	Joe Hart	Travis	320	W
147th	Mace B. Thurman, Jr.	Travis	256	W
167th	Bob Jones	Travis	328	W
200th	Paul R. Davis Jr.	Travis	320	W
201st	Jerry Dellana	Travis	324	W
250th	Harley Clark	Travis	145	W

[Caption]

STATE DEFENDANTS' ORIGINAL ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

The State Defendants -- that is, the Attorney General of Texas, the Secretary of State of Texas and the thirteen members of the Judicial Districts Board of Texas, all in their official capacities -- answer as follows to the Plaintiffs' Second Amended Complaint ("the complaint"):

First Defense

The complaint fails to state a claim against State Defendants upon which relief can be granted because:

A. Each of the judicial districts challenged by the plaintiffs already is a single member district. State district judges are elected to a specific judicial district and serve as the judge for that district without sitting as part of a collegial decisionmaking body. Vote dilution claims cannot be made against a single member electoral system;

B. Alternatively, as to the challenge to the 72nd Judicial District and the 114th Judicial District, only one state district judge is elected from each of the geographical

units comprising them. The 72nd Judicial District is comprised of the counties of Crosby and Lubbock. The 114th Judicial District is comprised of the counties of Smith and Wood. Therefore, each of these two districts is a single member district. Vote dilution claims cannot be made against a single member electoral system;

C. Alternatively, as to the challenge to the following judicial districts, each already is a single member district because it is the only judicial district in the county for which an election is scheduled in the year indicated in brackets adjacent to the district: (i) 238th Judicial District in Midland County [1990]; (ii) 268th Judicial District in Fort Bend County [1992]; (iii) 34th Judicial District in Culberson, El Paso, and Hudspeth Counties (combined) [1992]; (iv) 7th Judicial District in Smith County [1992]; and (v) 161st Judicial District in Ector County [1992]. Vote dilution claims cannot be made against a single member electoral system;

D. Alternatively, as to the challenge to the following judicial districts, each already is a single member district

because it is the only judicial district in the county devoted to the general civil/non-specialized, criminal, or family docket, as indicated in brackets adjacent to the district: (i) 289th Judicial District in Bexar County [family]; (ii) 147th Judicial District in Travis County [criminal]; (iii) 327th Judicial District in El Paso County [family]; (iv) 306th Judicial District in Galveston County [family]; (v) 321st Judicial District in Smith County [family]; (vi) 205th Judicial District in county unit of Culberson, El Paso, and Hudspeth [criminal]; (vii) 328 Judicial District in Fort Bend County [family]; and (viii) 318th Judicial District in Midland County [family]. (It subsequently may be determined that other of the challenged districts also are the only courts of a specialized type within a geographical unit and that, therefore, they too must be added to the immediately foregoing list.) Vote dilution claims cannot be made against a single member electoral system;

E. Alternatively, as to the challenge to the following judicial districts, each already is a single member district because it is the only judicial district in the county devoted

to the general civil/non-specialized, criminal, or family docket, as indicated in brackets adjacent to the district, for which an election is scheduled in the year indicated in braces adjacent to the court specialization designation: (i) 303rd Judicial District in Dallas County [family] {1992}; (ii) 360th Judicial District in Tarrant County [family] {1992}; (iii) 289th Judicial District in Bexar County [family] {1990}; (iv) 147th Judicial District in Travis County [criminal] {1990}; (v) 327th Judicial District in El Paso County [family] {1990}; (vi) 306th Judicial District in Galveston County [family] {1990}; (vii) 321st Judicial District [family] {1990}; (viii) 241st Judicial District in Smith County [general civil/non-specialized] {1990}; (ix) 7th Judicial District in Smith County [general civil/non-specialized] {1992}; (x) 205th Judicial District in county unit of Culberson, El Paso, and Hudspeth [criminal] {1990}; (xi) 210th Judicial District in county unit of Culberson, El Paso, and Hudspeth [general civil/non-specialized] {1990}; (xii) 34th Judicial District in county unit of Culberson, El Paso, and Hudspeth [general civil/non-specialized] {1992}; (xiii) 328th Judicial District in

Fort Bend County [family] {1990}; (xiv) 240th Judicial District in Fort Bend County [general civil/non-specialized] {1990}; (xv) 268th Judicial District in Fort Bend County [general civil/non-specialized] {1992}; (xvi) 318th Judicial District in Midland County [family] {1992}; (xvii) 238th Judicial District in Midland County [general civil/non-specialized] {1990}; and (xviii) 142nd Judicial District in Midland County [general civil/non-specialized] {1992}. (It subsequently may be determined that other of the challenged districts also are the only courts of a specialized type within a geographical unit up for election in a given year and that, therefore, they too must be added to the foregoing list.) Vote dilution claims cannot be made against a single member electoral system.

Second Defense

1. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of ¶1 of the complaint. The remainder of ¶1 of the complaint contains only averments to which no responsive pleading is required; however, to the

extent it is construed to contain averments requiring a responsive pleading, the State Defendants deny them.

2. ¶2 of the complaint contains only averments to which no responsive pleading is required; however, to the extent it is construed to contain averments requiring a responsive pleading, the State Defendants deny them.

3. To the extent that ¶3 of the complaint is construed to contain averments to which a responsive pleading is required, the State Defendants admit ¶3's averment that the Court has jurisdiction over this action, but deny that each of the cited provisions provides such jurisdiction.

4. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶¶4-17 of the complaint.

5. The State Defendants admit that the averments in the first two sentences of ¶18 accurately identify who hold the two official positions to which reference is made and are generally accurate in their description of the state law-based responsibilities concerning the administration and

enforcement of the laws of the state of Texas, including those concerning the electoral process. Because of uncertainty about the intended reach of some of the descriptions of the officials' duties in the first two sentences of ¶18, however, the State Defendants are without knowledge or information sufficient to form a belief as to the truth of those averments beyond what is stated in the preceding portion of this paragraph. The State Defendants admit the averments in the third sentence of ¶18, except they deny that John F. Onion and Charles J. Murray are members of the Judicial Districts Board of Texas. They have been replaced by Michael J. McCormick and Roger J. Walker, respectively. The State Defendants deny the averments in the fourth sentence of ¶18 because the reapportionment duties are not exclusive and are dependent on other circumstances.

6. The State Defendants admit the averments in ¶19 of the complaint.

7. The State Defendants deny the averments in ¶20 of the complaint.

8. The State Defendants deny the averments in ¶21 of the complaint insofar as they state or imply that: counties are being challenged; they have listed all the counties within whose geographical boundaries lie challenged judicial districts; and the listing of the number of state district judges elected within a specific county's geographical boundaries indicates the number of at-large positions held by state district judges within that county's boundaries. At this point, the State Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in the paragraph, including averments concerning population data indicated by the 1980 United States Census. The 1980 United States Census data speaks for itself.

9. The State Defendants deny the averments in ¶¶22 and 23 of the complaint.

10. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶¶24-26 of the complaint.

11. The State Defendants admit, except for certain spelling or typographical errors, the averments in ¶27 of the

complaint concerning the listing of the challenged district courts and the names of the individuals currently holding those positions. The State Defendants admit the paragraph's averments about the geographical unit in which voters may cast their votes for those judicial district positions, except for the averments about the 72nd and 114th Judicial Districts. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶27 of the complaint about the voting precinct and the race or ethnicity of the individuals currently holding the district judgeships. However, attached as Exhibit A to this answer is a chart which assumes the accuracy of the plaintiffs' racial/ethnic classification of individuals currently holding office in the challenged judicial districts. Exhibit A uses this assumption, plus the specialization designations for the judicial districts in the Texas Government Code, plus the schedule of when those positions are up again for election as indicated in the 1988 Fiscal Year Report on the Texas Judicial System as prepared by the Texas Judicial Council/Office of Court Administration.

12. The State Defendants deny the averments in ¶¶28 and 29 of the complaint.

13. ¶30 of the complaint contains only legal averments to which no responsive pleading is required.

14. The State Defendants deny the averments in ¶¶31 and 32 of the complaint.

15. ¶33 of the complaint contains only legal averments to which no responsive pleading is required.

Respectfully submitted,

JIM MATTOX
Attorney General of Texas

[Caption]

DALLAS COUNTY DISTRICT JUDGE F. HAROLD ENTZ'S FIRST AMENDED ANSWER TO LULAC'S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE BUNTON:

The Honorable F. Harold Entz ("Judge Entz") files his First Amended Answer to LULAC's Second Amended Complaint as follows:

RESPONSE TO NUMBERED PARAGRAPHS

1. Judge Entz lacks knowledge and information sufficient to form a belief regarding the specific membership of LULAC, the various LULAC councils, and the named individual plaintiffs, but has no reason to doubt that they are Mexican-American and African-American citizens of the State of Texas. Judge Entz need not respond to the legal statement with respect to the purported statutory bases for the instant action, but specifically denies that any of the Dallas County Plaintiffs have been denied any of their rights, privileges, or immunities secured by the laws of the United States of America.

2. Judge Entz denies that the Dallas County

Plaintiffs are entitled to any of the relief sought.

3. Judge Entz does not contest jurisdiction at this time, but denies that any cause of action exists with respect to Dallas County.

4.-17. Judge Entz lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

18. Judge Entz admits that the persons named hold the identified offices. The balance of the paragraph alleges a legal conclusion that Judge Entz neither admits nor denies.

19. Admitted as to Dallas County.

20. Denied because of the ambiguous terms used. Dallas County Judicial Districts are coterminous with county lines and Judges are elected by majority vote in differing years.

21.-22. Judge Entz lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

23. Judge Entz denies that Mexican-Americans are sufficiently geographically compact in Dallas County to constitute a safe majority in any single member district if a single member districting plan was employed in Dallas

County. Judge Entz lacks knowledge or information sufficient to form a belief as to the truth of the balance of the allegations in the paragraph.

24.-26. Denied with respect to Dallas County.

27. Admitted with respect to Dallas County.

28.-29. Denied with respect to Dallas County.

30. This paragraph alleges a legal conclusion that Judge Entz neither admits nor denies.

31.-32. Denied with respect to Dallas County.

33. Judge Entz denies that Plaintiffs are entitled to the relief sought with respect to Dallas County.

AFFIRMATIVE DEFENSES

34. For purposes of preserving appellate review, Judge Entz affirmatively claims that neither the Voting Rights Act nor the 14th and 15th amendments of the United States Constitution apply to judicial selection.

35. The lack of electoral success, if any, of minority candidates for judicial office was not caused by the electoral practices that Plaintiffs challenge. Neither the Voting Rights Act nor the 14th and 15th amendments of the United States

Constitution apply to electoral practices that do not cause the lack of electoral success, if any, of minority candidates.

36. Electoral success of judicial candidates in Dallas County depends on the partisan affiliation of the candidate, rather than the race of the candidate. Neither the Voting Rights Act nor the 14th and 15th amendments of the United States Constitution ensure the right of minority voters to elect judicial candidates from the political party of their choice.

37. Neither the Voting Rights Act nor the 14th and 15th amendments of the United States Constitution permit aggregating distinct minority groups to prove dilution.

38. Application of either the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to judicial elections is unconstitutional because it violates the separation of powers doctrine, the 10th amendment of the United States Constitution, and fundamental principles of federalism.

39. Application of either the Voting Rights Act or the 14th and 15th amendments of the United States

Constitution to alter electoral practices that did not cause the lack of electoral success, if any, of minority judicial candidates or the underrepresentation, if any, of minorities among successful judicial candidates would be unconstitutional under the equal protection and due process clauses of the United States Constitution.

40. Application of the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to require single member districts for judicial elections in Dallas County without adjusting Texas state law venue and jury selection provisions to provide coterminous districts for venue and jury selection purposes would violate the due process and equal protection clauses and the 6th and 7th amendments of the United States Constitution.

41. Application of the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to adjust Texas state law venue and jury selection provisions would violate the Guaranty Clause and 10th amendment of the United States Constitution, as well as fundamental principles of federalism.

42. Application of the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to Dallas County to require single member judicial districts, based on a showing that minorities are unable to elect non-minority candidates of the political party of the minorities preference, would unconstitutionally interfere in the political process by favoring the political party currently enjoying the support of the minority population, as opposed to removing any alleged remaining obstacles to the elections of minority candidates.

43. Minorities are overrepresented on the Dallas County State District Courts in proportion to the number of minorities in Dallas County eligible for such judicial offices.

44. Plaintiffs' claims should be dismissed for failure to join all district judges within the "target counties" and all appellate judges as defendants in that these judges are necessary or indispensable parties under Rule 19.

WHEREFORE, Dallas County District Judge F. Harold Entz respectfully requests that the Plaintiffs' claims be dismissed with respect to the system for electing district

judges within Dallas County and that judgment be entered in his favor and that he recover all other relief to which he may show himself justly entitled.

Respectfully submitted,

[Caption]

DALLAS COUNTY DISTRICT JUDGE F. HAROLD ENTZ'S ANSWER TO PLAINTIFF INTERVENORS OLIVER, WHITE, AND TINSLEY

TO THE HONORABLE JUDGE BUNTON:

The Honorable F. Harold Entz ("Judge Entz"), to the extent that Plaintiff Intervenors Oliver, White, and Tinsley have not abandoned their Complaint in Intervention by joining in LULAC's Second Amended Complaint, responds as follows:

RESPONSE TO NUMBERED PARAGRAPHS

1. Judge Entz admits that Jesse Oliver, Fred Tinsley, and Joan Winn White ("Intervenors") are former state district judges of Dallas County. He need not respond to the legal statement with respect to the purported statutory bases for the instant action, but specifically denies that Intervenors or any of the Dallas County Plaintiffs have been denied any of their rights, privileges, or immunities secured by the laws of the United States of America.

2. Judge Entz denies that Intervenors or any of the Dallas County Plaintiffs are entitled to any of the relief

sought with respect to Dallas County.

3. Judge Entz does not contest jurisdiction at this time, but denies that any cause of action exists with respect to Dallas County.

4. Judge Entz lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

5. Judge Entz admits that the persons named hold the identified offices. The balance of the paragraph alleges a legal conclusion that Judge Entz neither admits nor denies.

6. Admitted as to Dallas County.

7. Denied because of the ambiguous terms used. Dallas County Judicial Districts are coterminous with county lines and Judges are elected by majority vote in differing years.

8.-17. Judge Entz lacks knowledge or information sufficient to form a belief as to the truth of these allegations, except that Judge Entz admits that Dallas County contains multiple judicial districts and denies that the Hispanic population in Dallas County is sufficiently compact to form a majority in any single member district that could be drawn.

18. Judge Entz denies that Mexican-Americans are sufficiently geographically compact in Dallas County to constitute a safe majority in any single member district if a single member districting plan was employed in Dallas County. Judge Entz lacks knowledge or information sufficient to form a belief as to the truth of the balance of the allegations in the paragraph.

19.-21. Denied with respect to Dallas County.

22. This paragraph calls for no responsive pleading.

23.-24. Denied with respect to Dallas County.

25. This paragraph alleges a legal conclusion that Judge Entz neither admits nor denies.

26.-27. Denied with respect to Dallas County.

28. Judge Entz denies that Intervenors or any of the Dallas County Plaintiffs are entitled to the relief sought with respect to Dallas County.

AFFIRMATIVE DEFENSES

29. For purposes of preserving appellate review, Judge Entz affirmatively claims that neither the Voting Rights Act nor the 14th and 15th amendments of the United

States Constitution apply to judicial selection.

30. The lack of electoral success, if any, of minority candidates for judicial office was not caused by the electoral practices that Plaintiffs challenge. Neither the Voting Rights Act nor the 14th and 15th amendments of the United States Constitution apply to electoral practices that do not cause the lack of electoral success, if any, of minority candidates.

31. Electoral success of judicial candidates in Dallas County depends on the partisan affiliation of the candidate, rather than the race of the candidate. Neither the Voting Rights Act nor the 14th and 15th amendments of the United States Constitution ensure the right of minority voters to elect judicial candidates from the political party of their choice.

32. Neither the Voting Rights Act nor the 14th and 15th amendments of the United States Constitution permit aggregating distinct minority groups to prove dilution.

33. Application of either the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to judicial elections is unconstitutional because

it violates the separation of powers doctrine, the 10th amendment of the United States Constitution, and fundamental principles of federalism.

34. Application of either the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to alter electoral practices that did not cause the lack of electoral success, if any, of minority judicial candidates or the underrepresentation, if any, of minorities among successful judicial candidates would be unconstitutional under the equal protection and due process clauses of the United States Constitution.

35. Application of the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to require single member districts for judicial elections in Dallas County without adjusting Texas state law venue and jury selection provisions to provide coterminous districts for venue and jury selection purposes would violate the due process and equal protection clauses and the 6th and 7th amendments of the United States Constitution.

36. Application of the Voting Rights Act or the 14th

and 15th amendments of the United States Constitution to adjust Texas state law venue and jury seiection provisions would violate the Guaranty Clause and 10th amendment of the United States Constitution, as well as fundamental principles of federalism.

37. Application of the Voting Rights Act or the 14th and 15th amendments of the United States Constitution to Dallas County to require single member judicial districts, based on a showing that minorities are unable to elect non-minority candidates of the political party of the minorities preference, would unconstitutionally interfere in the political process by favoring the political party currently enjoying the support of the minority poplulation, as opposed to removing any alleged remaining obstacles to the elections of minority candidates.

38. Minorities are overrepresented on the Dallas County State District Courts in proportion to the number of minorities in Dallas County eligible for such judicial offices.

39. Plaintiffs' claims should be dismissed for failure to join all district judges within the "target counties" and all

appellate judges as defendants in that these judges are necessary or indispensable parties under Rule 19.

WHEREFORE, Dallas County District Judge F. Harold Entz respectfully requests that Intervenors and the Dallas County Plaintiffs' claims be dismissed with respect to the system for electing district judges within Dallas County and that judgment be entered in his favor and that he recover all other relief to which he may show himself justly entitled.

Respectfully submitted,

[Caption]

STATE DEFENDANTS' ANSWER TO COMPLAINT IN INTERVENTION BY HOUSTON LAWYERS' ASSOCIATION, ET AL.

The State Defendants -- that is, the Attorney General of Texas, the Secretary of State of Texas, and the thirteen members of the Judicial Districts Board of Texas, all in their official capacities -- answer as follows to the Complaint in Intervention ("complaint") of the Houston Lawyers' Association, Alice Bonner, Weldon, Berry, Francis Williams, Rev. William Lawson, Deloyd T. Parker, and Bennie McGinty.

First Defense

The complaint fails to state a claim against State Defendants upon which relief can be granted because each of the judicial districts challenged in Harris County already is a single member district. Sate district judges are elected to a specific judicial district and serve as the judge for that district without sitting as part of a collegial decisionmaking body. Vote dilution claims cannot be made against a single member electoral system.

Second Defense

1. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of ¶1 of the complaint. The remainder of ¶1 of the complaint contains only averments to which no responsive pleading is required; however, to the extent it is construed to contain averments requiring a responsive pleading, the State Defendants deny them.

2. ¶¶2 and 3 of the complaint contain only averments to which no responsive pleading is required; however, to the extent they are construed to contain averments requiring a responsive pleading, the State Defendants deny them.

3. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of averments in ¶¶ 4-10 of the complaint.

4. The State Defendants admit that the averments in ¶¶11--13 of the complaint accurately identify the holders of the official positions to which reference is made and are generally accurate in their descriptions of the state law-based

responsibilities concerning the administration and enforcement of the laws of the state of Texas, including those concerning the electoral process. Because of uncertainty about the intended reach of some of the descriptions of the officials' duties in ¶¶11-13, however, the State Defendants are without knowledge or information sufficient to form a belief as to the truth of those averments beyond what is stated in the preceding portion of this paragraph.

5. The State Defendants deny the averments in the first three sentences of ¶14 of the complaint and admit the averments in the fourth sentence of that paragraph. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the last sentence of ¶14 of the complaint.

6. The State Defendants deny the averments in ¶15 of the complaint, among other things, because of uncertainty as to the full meaning of "history."

7. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the

averments in ¶16-18 of the complaint.

8. The State Defendants admit the averments in ¶19 of the complaint.

9. The State Defendants deny the averments in ¶¶20-22 of the complaint.

10. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶¶23-24 of the complaint.

11. The State Defendants deny the averments in ¶25 of the complaint.

12. Except for the averments in the second sentence of ¶27, which they admit, the State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶¶26-29 of the complaint.

13. The State Defendants admit the averments in the first sentence of ¶30 of the complaint and deny the averments in the remainder of that paragraph.

14. The State Defendants deny the averments in ¶¶31-32 of the complaint, in part because of uncertainty as to the intended reach of some of the allegations.

15. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶33 of the complaint.

16. The State Defendants deny the averments in ¶¶34-35 of the complaint.

17. The State Defendants incorporate by reference their Answer to the paragraphs 11-29 of Plaintiffs' First Amended Complaint as their response to ¶36 of the complaint.

18. The State Defendants admit the averments in ¶37 of the complaint.

19. The State Defendants admit that the averments in ¶38 of the complaint are generally correct, but note that the first sentence of the current version of the referenced constitutional provision states that the "State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution."

20. The State Defendants deny the averments in ¶¶39-40 of the complaint.

21. The State Defendants are without knowledge or

information sufficient to form a belief as to the truth of the averments in ¶41 of the complaint.

22. The State Defendants deny the averments in ¶42 of the complaint.

23. The State Defendants admit the averments in ¶43 of the complaint.

24. The State Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in ¶44 of the complaint.

25. The State Defendants deny the averments in ¶¶45-48 of the complaint.

26. The remainder of the complaint contains only legal averments to which no responsive pleading is required.

TRIAL EXHIBIT NO. 1 OF JUDGE SHAROLYN WOOD

TRIAL EXHIBIT NO. 1 OF JUDGE SHAROLYN WOOD

HARRIS COUNTY MINORITY CANDIDATE
CONTESTED JUDICIAL RACES:

GENERAL ELECTIONS

Court		Candidates		Vote	GOP %
		1980			
Court of Civil Appeals	(W)	(R)*	Conway	298,274	50.9
	(B)	(D)	Doyle	288,197	
80th District Court	(W)	(R)	McAfee	306,767	51.4
	(B)	(D)*	Bonner	290,458	
309th District Court	(W)	(R)	Zimmerman	309,816	51.6
	(H)	(D)*	Hinojosa	290,870	
County Criminal Court	(W)	(R)	Musselwhite	307,931	53.3
	(B)	(D)*	Muldrow	269,420	

* = Incumbent
Winner is underlined

42 Races

26 White Winners
11 Hispanic Winners
5 Black Winners

133a

Court		Candidates		Vote	GOP %
		1982			
157th District Court	(W)	(R)	Powell	185,030	46.0
	(H)	(D)*	Salazar	217,234	
208th District Court	(W)	(R)	Arnold	191,659	48.7
	(B)	(D)*	Routt	201,838	
262nd District Court	(W)	(R)	Shaver	199,671	51.1
	(B)	(D)*	James	190,716	
281st District Court	(H)	(R)	Moore	201,623	51.9
	(B)	(D)*	Ward	187,093	
308th District Court	(H)	(R)	Leal	190,985	48.7
		(D)	Robertston	201,465	
County Criminal Court 6	(W)	(R)	Musselwhite	198,221	50.9
	(B)	(D)*	Muldrow	191,136	
County Criminal Court 9	(W)	(R)	Kolenda	172,467	44.8
	(H)	(D)*	Leal	212,091	

134a

Court		Candidates		Vote	GOP %
		- 1980 -			
Court of Appeals No. 1, Place 2	(W)	(D)	O'Connor	365,280	
	(B)	(R)*	Hoyt	414,462	53.2
80th District Court	(B)	(D)*	Berry	347,336	
	(W)	(R)	Powell	416,438	54.5
178th District Corut	(B)	(D)*	Jackson	324,025	
	(W)	(R)	Harmon	429,858	57.0
215th District Court	(B)	(D)*	Lee	363,686	
	(W)	(R)	Chambers	401,026	52.4
339th District Court	(H)	(D)*	Salinas	359,482	
	(W)	(R)	Lanford	400,734	52.7
- 1986 -					
Texas Supreme Court, Place 4	(H)	(D)*	Gonzales	241,196	
	(W)	(R)	Bates	208,211	46.3
157th Civil District Court	(H)	(D)*	Salazar	243,146	
	(W)	(R)	Wittig	200,169	45.2

135a

Court		Candidates		Vote	GOP %
180th Criminal District Court	(H)	(D)*	Guerrero	211,905	
	(W)	(R)	Lykos	230,825	52.1
185th Criminal District Court	(B)	(D)*	Walker	218,637	
	(W)	(R)	Godwin	209,663	49.0
209th Criminal District Court	(H)	(D)*	Sanchez	192,359	
	(W)	(R)	McSpadden	250,808	56.6
232nd Criminal District Court	(H)	(D)*	Azios	234,271	
	(W)	(R)	Youngblood	203,799	46.5
245th Civil District Court	(W)	(D)	Schuble	241,414	
	(B)	(R)*	Proctor	191,477	44.2
281st Civil District Court	(B)	(D)*	Berry	202,886	
	(H)	(R)	Moore	229,288	53.1
308th Family District Court	(W)	(D)	Robertson	236,044	
	(H)	(R)*	Dodier	183,755	43.8
County Civil Court 3	(B)	(D)*	Hobson	217,363	
	(W)	(R)	Hughes	211,650	49.3
County Criminal Court 3	(W)	(D)	Duncan	238,376	
	(B)	(R)*	Irvin	199,867	45.6

136a

Court		Candidates		Vote	GOP %
County Criminal Court 9	(H)	(D)*	Leal	226,455	
	(W)	(R)	Powell	199,667	46.9
County Criminal Court 11	(H)	(D)*	Mendoza	221,631	
	(W)	(R)	Pickren	206,094	48.2
County Criminal Court 13	(B)	(D)*	Fitch	211,713	
	(W)	(R)	Atkinson	213,268	50.2
County Criminal Court 14	(B)	(D)*	Fisher	201,922	
	(W)	(R)	Barclay	216,467	51.7
County Probate Court 4	(B)	(D)*	Lee	212,710	
	(W)	(R)	McCullough	223,894	51.3
- - - - - - - - - - - - - - - - - - - -		1988		- - - - - - - - - - - - - - - - - - - -	
Supreme Court, Place 3	(H)	(D)*	Gonzales	407,451	55.9
	(W)	(R)	Howell	309,486	43.38
	(W)	(L)	Scholz	13,262	1.81
1st Court of Appeals District, Place 6	(H)	(D)*	Mirabal	385,692	54.09
	(W)	(R)	Stephanow	327,365	45.91

Court		Candidates		Vote	GOP %
80th District Court	(B)	(D)*	Berry	307,612	43.32
	(W)	(R)	Powell	402,426	56.68
133rd District Court	(B)	(D)*	Plummer	313,880	44.67
	(W)	(R)	McCorkle	388,804	55.33
152nd District Court	(B)	(D)	Fitch	329,325	46.53
	(W)	(R)*	O'Neill	378,353	53.47
179th District Court	(H)	(D)	Guerrero	347,287	49.36
	(W)	(R)	Wilkinson	356,335	50.64
215th District Court	(B)	(D)	Jackson	307,147	44.04
	(W)	(R)	Chambers	390,290	55.96
295th District Court	(B)	(D)	Lee	344,835	48.5
	(W)	(R)*	Downey	366,130	51.5
333rd District Court	(B)	(D)	Spencer	335,960	47.73
	(W)	(R)	Wilson	367,927	52.27
351st District Court	(H)	(D)	Salinas	363,444	51.76
	(W)	(R)	Pruett	338,769	48.25

TRIAL EXHIBIT NO. 2 OF JUDGE SHAROLYN WOOD

HARRIS COUNTY MINORITY CANDIDATE JUDICIAL RACES:

DEMOCRATIC PRIMARY ELECTIONS

Position	Name	Vote	%
	- 1982 -		
157th Judicial District	(H) Salazar	40,821	100
208th Judicial District	(B) Routt	40,854	100
246th Judicial District	(B) Peavy	42,881	100
County Criminal Court #2	(W) Hendrix	27,426	52.97
	(H) Barrera	24,346	47.03
County Criminal Court #6	(B) Muldrow	36,976	100

Winner is underlined

39 Races:

20 Black Winners
13 Hispanic Winners
6 White Winners

Position		Name	Vote	%
		1984		
Court of Appeals, District 1 Place 2	(B)	Mims	18,373	18.92
	(W)	Briscoe	36,363	37.73
	(W)	Price	19,513	20.10
	(W)	O'Conner	22,573	23.25
80th Judicial District	(B)	Berry	71,624	100
178th Judicial District	(W)	Dietz	5,236	5.91
	(H)	Castillo	28,018	31.62
	(W)	O'Brien	17,374	19.61
	(W)	Parrott	10,326	11.65
	(W)	Stripling	4,222	4.77
	(B)	Jackson	23,448	26.46
215th Judicial District	(W)	Brannon	15,282	15.93
	(B)	Lee	57,278	59.68
	(W)	Price	23,413	24.39
333rd Judicial District	(W)	Gilbert	21,293	24.92
	(W)	Levi	14,462	16.93
	(W)	Walters	26,938	31.53
	(H)	Sanchez	22,749	26.62

Position		Name	Vote	%
339th Judicial District	(B)	White	30,673	34.82
	(H)	Salinas	43,251	48.96
	(B)	James	14,414	16.32
351st Judicial District	(W)	Burnett	51,143	64.83
	(B)	Muldrow	27,748	35.17
County Civil Court at Law No. 3 (Unexpired)	(H)	Chow	25,377	29.02
	(B)	Hobson	32,868	37.58
	(W)	Drake	21,946	25.10
		Amaimo	7,261	8.30
		1986		
Supreme Court, Place 4 (Unexpired)	(H)	Gonzalez	29,334	57.27
	(W)	Humphreys	8,196	16.00
	(W)	Gibson	9,791	19.11
	(W)	Ivy	3,902	7.62
157th Judicial District	(H)	Salazar	40,568	100

Position		Name	Vote	%
180th Judicial District	(H)	Guerrero	20,765	43.79
	(W)	Kobobel	8,725	18.40
	(W)	Lanier	17,927	37.81
185th Judicial District	(B)	Walker	29,011	49.61
	(H)	Salinas	23,412	40.04
	(W)	Peterson	6,052	10.35
208th Judicial District	(B)	Routt	39,116	100
209th Judicial District	(H)	Sanchez	38,209	100
232nd Judicial District	(H)	Azios	39,995	100
246th Judicial District	(B)	Peavy	42,097	100
281st Judicial District	(B)	Berry	39,416	100
295th Judicial District	(B)	Jackson	24,650	48.15
	(W)	White	26,539	51.85
County Court at Law No. 3	(B)	Hobson	36,246	100
County Criminal Court No. 4	(B)	Williams	39,730	100
County Criminal Court No. 9	(H)	Leal	37,508	100

Position		Name	Vote	%
County Criminal Court No. 11	(W)	Craggs	9,073	18.97
	(H)	Mendoza	17,062	35.67
	(W)	Bynum	5,342	11.17
	(W)	Reynolds	9,109	19.05
	(W)	Bostick	7,241	15.14
County Criminal Court No. 13	(B)	Fitch	37,300	100
County Criminal Court No. 14	(B)	Fisher	25,125	50.86
	(H)	Fraga	24,280	49.14
County Probate Court No. 4	(W)	Smith	19,478	34.68
	(B)	Lee	36,689	65.32
- - - - - - - -		- 1988 -	- - - -	- - - -
Supreme Court, Place 3	(H)	Vega	55,100	45.93
	(H)	Gonzalez	64,855	54.07
1st Court of Appeals District, Place 5	(W)	Levy	60,505	52.47
	(H)	Mirabal	54,805	47.53
80th Judicial District	(B)	Berry	90,418	100

Position	Name	Vote	%
133rd Judicial District	(B) Plummer	91,505	100
152nd Judicial District	(B) Fitch	88,890	100
179th Judicial District	(H) Guerrero	55,616	48.09
	(W) Robertson	45,825	39.62
	(W) Tise	14,212	12.29
215th Judicial District	(B) Jackson	61,586	62.60
	(W) Smith	36,803	37.41
333rd Judicial District	(B) Spencer	63,676	59.55
	(W) Wooten	43,248	40.45
351st Judicial District	(H) Salinas	87,874	100

[Caption]

MOTION OF JUDGES TOM RICKHOFF, SUSAN D. REED, JOHN J. SPECIA, JR., SID L. HARLE, SHARON MACRAE, AND MICHAEL P. PEDEN TO INTERVENE AS DEFENDANTS

TO THE HONORABLE JUDGE OF SAID COURT:

Judges Tom Rickhoff, Susan D. Reed, John J. Specia, Jr., Sid L. Harle, Sharon MacRae, and Michael P. Peden move for permission to intervene in this action as party defendants pursuant to Rule 24(a) and (b) of the Federal Rules of Civil Procedure and attach as Exhibit A to this Motion their original Intervention (as Defendants) for the following reasons:

INTERVENTION OF RIGHT PURSUANT TO RULE 24(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

1. Rule 24(a)(2) allows intervention as of right by intervenors who: (1) are timely; (2) have an interest relating to the subject of the action; (3) are so situated that the disposition of the action may, as a practical matter, impair or impede their ability to protect that interest; and (4) are inadequately represented by existing parties. Rule 24(b) grants the court discretion to allow intervention by

intervenors whose claims or defenses have a question of law of fact in common with the main action and whose intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

2. Judges Tom Rickhoff, Susan D. Reed, John J. Specia, Jr., Sid L. Harle, Sharon MacRae, and Michael P. Peden (the "Bexar County District Judge Intervenors") are presently State Court District Judges (in the 289th, 144th, 225th, 226th, 290th, and 285th District Courts) in Bexar County, Texas. Bexar County is one of the counties in Texas made the subject of the claims by Plaintiff and Plaintiff-Intervenors in this action. All of the Bexar County Judge Intervenors are incumbents, and all have filed for re-election or announced their intent to file for re-election in the upcoming judicial elections.

3. The Bexar County District Judge Intervenors have interests relating to the transaction which is the subject of this action, the Court's Memorandum and Order of November 8, 1989, as they affect Bexar County and in the joint proposed interim plan between the Attorney General of

the State of Texas and the Plaintiffs. Other judges from Dallas and Harris County, Texas, already have intervened in this action as Defendants, and the Court already has recognized the propriety of such intervention of those judges.

4. The Bexar County District Judge Intervenors are situated so that the Court's disposition of this action will impair and impede substantially their ability to protect their interests, and the interests of the Bexar County District Judge Intervenors certainly are not represented adequately by any existing party in this action. In fact, the Attorney General of Texas, counsel for the State Defendants, has joined with Plaintiffs in submitting to the Court a joint Proposed Interim Plan that is contrary to these Intervenor's interests.

5. These Intervenor's are also similarly situated with and form part of the nexus between the remainder of the Bexar County District Judges, and the other district judges of the Fourth Judicial Administrative District, who will be impacted by the scope of any proposed interim plan or judgment so that the entire group of judges affected by any proposed interim plan and judgment will be similarly

and simultaneously affected.

6. These Intervenor's, as well as the other judges mentioned in paragraph 4 above, are uniquely situated as a group to decide proper court administration and determine the rights of litigants.

7. The joint proposed plan is entirely inconsistent with and prejudicial to the interests of the Bexar County Judge Intervenors, are contrary to the express wishes and specific instructions of the Attorney General's clients and contrary to the Texas Constitution. The Attorney General's unauthorized impermissible actions have been widely criticized by his clients, including the Governor of the State of Texas, the Chief Justice of the Supreme Court of Texas, and Associate Justice of the Supreme Court of Texas, and numerous State District judges who are directly affected. An obvious conflict of interest exists and the court should not approve the proposed interim plan of the Attorney General under such circumstances.

8. This case has great and serious implications for all Texans and the entire judicial system in Texas, will

require submission to the voters of amendments to the Texas Constitution, will require the Texas Legislature to act, and should not proceed in any manner until Defendants can secure counsel who will in fact represent Defendants fully and properly.

9. This Honorable Court on November 8, 1989, after extensive consideration, entered its Memorandum Opinion and Order (the "Order") in which the Court made certain explicit comments that are pertinent here. The Court expressed the following comments:

a. Legislation should be done by legislators (Order, p. 4);

b. The Texas Constitution will need to be amended (Order, p. 4); and

c. Single member districts may or may not be the answer if we are to continue to have partisan elections (Order, p. 6).

Should the Legislature fail to adopt a satisfactory remedy in the Special Session . . . this Court will consider the granting of an expedited appeal to the Fifth Circuit to

determine whether or not the Declaratory Judgment of this Court [the "Order"] was properly made. (Order, p. 94).

10. In this proceeding, the Intervenors have been represented by the Attorney General of the State of Texas, who, following the Court's Order of November 8, 1989, has decided, without proper authority, to submit an interim plan to this Court to govern judicial elections of Intervenors, and others similarly situated, for the 1990 election.

11. In so proposing, the Attorney General's proposed plan violates the Texas Constitution, Article 5, § 7 (Vernon Supp. 1989) which allows Intervenors to serve a term of four (4) years because the proposed plan allows Intervenors to serve only two (2) years if elected in 1990. This Court did not find Article 5, § 7 to be unconstitutional in any manner, nor does the Attorney General have the authority to require a two (2) year term.

12. Furthermore, the Judicial Districts Board is created by the Texas Constitution, Article V, Section 7-A, which among other powers, is empowered to internally administer judicial assignments within the affected districts.

The Court's opinion did not hold the Board's authority to administer internal affairs to be unconstitutional.

13. Without regard to these constitutional limitations, the Attorney General's proposed interim plan constitutes a settlement which:

a. Clearly does not take into account all necessary factors of the class of judges affected.

b. Is a clear effort to preclude an appeal of right by affected class members, and

c. Would create turmoil and confusion as to the internal administration of trial dockets which could substantially impair the rights of litigants in civil cases, the rights of defendants in criminal cases, and the ability to fairly assign judges for the trial of cases.

14. It is unwarranted to deny these Intervenors a right to intervene because they will be left without representation as to the proposed plans before the Court and will be denied the right to appeal clearly warranted by the Court's Order.

15. Because of the lack of adequate representation, any action by this court would not be binding upon Intervenors and no action should be taken by the Court until this issue is fully resolved. It is settled law that where there is not adequate representation, parties are not bound by any judgment. A case of this nature, extent, importance, and complexity, with its broad effects, should not proceed without the Defendants having proper representation. Intervenors' interests as well as the interest of other judges and the people of Texas cannot be validly and determined with finality under the present circumstances.

16. Because of the crucial importance of this matter, the great expense which will be involved in any relief (interim or otherwise) that this Court determines, the cloud cast on this case and the conduct of the Attorney General should not be permitted to continue as to these Intervenors who are directly affected as are other District Judges, have no adequate representation, and thus any judgment entered will not be binding on them or others similarly situated.

17. The Bexar County District Judge Intervenors,

therefore, are entitled to intervene in this action as a matter of right under Rule 24(a), and request that the Court permit their intervention in this action only for the purposes being afforded an opportunity to be heard and a right to participate in the claims made regarding Bexar County and any proposed relief, either interim or permanent, affecting election of judges in Bexar County.

PERMISSIVE INTERVENTION PURSUANT TO RULE 24(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE

18. The Bexar County District Judge Intervenors request as an alternative to their claim to intervention as a matter of right under Rule 24(a) that the Court grant them permissive intervention under Rule 24(b).

19. The Bexar County District Judge Intervenors are substantially prejudiced by the claims of Plaintiffs, and have defenses with issues of law and fact which are both common to those of the State Defendants and have additional defense.

20. As in their claim to intervention as a matter of right, the Bexar County District Judge Intervenors request that the Court allow them to intervene under Rule 24(b) only

for the purposes of being afforded an opportunity to be heard and a right to participate in the claims asserted in this action about Bexar County and any relief, either interim or permanent, affecting the election of State Court Judges in Bexar County.

21. Intervention in this action by the Bexar County District Judge Intervenors will not unduly delay or prejudice the rights of the original parties. Their Motion is timely filed because no final judgment has been entered by the Court and its filing is contemporaneous with our understanding of the Court's deadline for consideration of plans.

REQUESTS FOR RELIEF

21. Accordingly, the Bexar County District Judge Intervenors request that the Court grant their Motion to Intervene under Rule 24(a) for the limited purposes of defending their interests against Plaintiffs' claims for relief in Bexar County, Texas, and any relief affecting the election of judges in Bexar County.

22. The Bexar County District Judge Intervenors

request alternatively that the Court grant their Motion to Intervene under Rule 24(b) for the limited purposes of defending their interests against Plaintiffs' claims for relief in Bexar County, Texas, and any relief affecting the election of judges in Bexar County.

23. The Bexar County District Judge Intervenors request that if the Court grants this Motion under either Rule 24(a) or 24(b) the Court consider as filed for all purposes in this action the signed, original Intervention of Judges Tom Rickhoff, Susan D. Reed, John J. Specia, Jr., Sid L. Harle, Sharon MacRae, and Michael P. Peden as Defendants attached to this Motion as Exhibit A.

Respecfully submitted,

[Caption]

STATE DEFENDANTS' RESPONSE TO MOTION TO INTERVENE BY JUDGES RICKHOFF, REED, SPECIA, HARLE, MACRAE, AND PEDEN

The State Defendants reply as follows to the motion to intervene filed by six state district judges sitting in Bexar County ("Bexar County judge-intervenors"):

Without conceding the validity of the assertions made in the intervention motion and supporting documents, the State Defendants do not oppose the motion insofar as the Bexar County judge-intervenors seek to intervene in their individual, or personal, capacities. In its rulings concerning the attempted intervention of thirteen Travis County judges, this Court has held that personal capacity intervention by sitting judges may be appropriate whereas official capacity intervention is not. In an appeal arising out of this case, the Fifth Circuit has agreed, by holding that sitting district judges have no legally cognizable interest in this case in their official capacity. See *LULAC v. Clements*, 884 F.2d 185, 188 (5th Cir. 1989).

Respectfully submitted,

FILED JAN 2, 1990

ORDER

BEFORE THIS COURT are the parties with their respective Proposed Interim Plans, Motions to Certify this Court's Memorandum Opinion and Order, of November 8, 1989, for Interlocutory Appeal, and Motion of Bexar County District Judges to Intervene in the above captioned cause.

This case is reminiscent of several lines of a recent song, I'm for Love, by Hank Williams, Jr. The lyric goes,

> "The City is against the county,
> The county is against the state,
> The state is against the government, and
> the highway still ain't paved."

In this case the Governor has been against the Attorney General, the Attorney General against the Legislature, the Judges against this Court, and the system is still flawed. This is a regrettable situation, but it can't be helped. The Hank Williams song goes on to say "But I'm for love, and I'm for happiness."

This case was filed on July 11, 1988 and originally set for trial on February 13, 1989. The Court was persuaded,

at least on one occasion, to continue the trial to give the Texas Legislature a chance to address the issue during its Regular Session. This Court continued the above captioned cause to April 17, 1989 to await the United States Supreme Court's disposition of the Petition for Writ of Certiorari in the case of Roemer v. Chisom. The Court again continued the case to July 11, 1989, based on oral Motions to Continue made on the record during a hearing on Motions to Intervene held by this Court on February 27, 1989. The Court continued the trial to September 18, 1989, because of a conflict of settings with one of the attorneys. At the conclusion of the trial in September, the Court was requested to hand down its opinion prior to the convening of the Texas Legislature in Special Session so that a violation (if one was indeed found) could be looked at and perhaps remedied during the Special Session.

This Court specifically reserved ruling upon Plaintiffs' Motion for an Order enjoining further use of the at-large election scheme in the affected counties until the State Legislature had an opportunity to offer a remedial plan. The

Legislature went into Special Session on November 13, 1989, some five days after entry of this Court's November 8, 1989 Order. Governor Clements deemed it advisable not to submit the question of judicial redistricting to the Special Session. The governor did, however, request that he and this Court meet and discuss the matter. The meeting was held, and attorneys for both Plaintiffs and Defendants were present. The Governor advised the Court that no remedy would be forthcoming until some time after the March 13, 1990 Primary Elections. The Governor requested that the matter be delayed until the Regular Session of the Legislature in January, 1991. He further advised the Court that, if this was not satisfactory, he would call a Special Session some time in April or May of 1990 and request the Legislature to study and take whatever action might be necessary to remedy the situation.

The timing is perhaps unfortunate. There will be a census taken in 1990, which may reflect some changes in population in the nine counties involved. Our Legislature meets in Regular Session only in odd years and inevitably

somewhere down the line the method of selection or election of State District Judges will have to be submitted to the voters of Texas. The Court is of the opinion that a delay until after the Primary Elections are held in 1990 and a delay until after a Special Session of the Legislature is held in late spring of 1990 and a further delay of implementation of any solution by the Legislature would not be in the interest of justice, would further dilute the rights of minority voters in the target counties in question, and would be inequitable and work an even greater hardship on the judges and courts involved.

Because the Legislature took no action on the matter in Special Session in November and December, 1989, and the refusal of the Supreme Court to grant a writ in Chisom v. Roemer, 853 F.2d 1186, 1192 (5th Cir. 1988), and the statements of the Governor of the State of Texas, and the imminence of the Primary Elections in 1990, the Court is not inclined to defer action. See Wise v. Lipscomb, 437 U.S. 535 (1978). Under these circumstances, this Court is of the opinion that it may fashion an *interim plan* that the

law, equity and justice require. *Chisom, supra*, at 1192. On December 12, 1989, or shortly thereafter, all parties were advised to file any Proposed Plans and Objections with the Court by December 22, 1989. An Agreed Settlement was entered into by and between the Plaintiffs and Defendants in this matter, but was not approved by some of the Intervenors.

The Court should point out that the State Legislature will have still a third opportunity to propose a permanent remedy consistent with this Court's November 8, 1989 Order should it convene, and should it pass legislation in April or May of 1990.

The plan which follows is strictly an interim plan for the 1990 elections affecting 115 State District Court judicial seats in the nine counties in action. Upon consideration of the Motions, Responses, Objections, letters, exhibits, attachments and arguments of the parties, the Court is of the opinion that the following Orders are appropriate. Accordingly,

IT IS ORDERED that the Joint Motion of Plaintiffs,

Plaintiff-Intervenors and the Attorney General of Texas for Entry of a Proposed Interim Plan is hereby GRANTED IN PART and DENIED IN PART in the following respects:

1. All Defendants and those acting in concert are hereby enjoined from calling, holding, supervising and certifying elections for State District Court Judges in Harris, Dallas, Tarrant, Bexar, Travis, Jefferson, Lubbock, Ector and Midland Counties under the current at-large scheme.

2. For the 1990 elections, according to the Secretary of State of Texas, one hundred fifteen (115) District Court elections are scheduled in the counties affected by this Court's Order. The following number of District Courts are up for election by respective county: Harris (36); Dallas (32); Tarrant (14); Bexar (13); Travis (6); Jefferson (6); Lubbock (3); Ector (3); and Midland (2).

Under this Interim Plan, District Court Elections in Harris, Dallas, Tarrant and Bexar Counties shall be selected from existing State Legislative House District lines as indicated in Attachment A. District Court Elections in Travis County shall be from existing Justice of the Peace

Precinct Lines. See Attachment A. District Court Elections in Jefferson, Lubbock, Ector and Midland Counties shall be according to existing County Commissioner Precinct Lines. *Id.* Each county shall be designated by a District Number, and each election unit by subdistrict number.

3. Each candidate shall run within a designated subdistrict and be elected by the voters in the subdistrict. Consistent with the Texas Constitution, each candidate must be a resident of his or her designated judicial district (which is countywide), but need not be a resident of the election subdistrict.

4. Elections shall be non-partisan. Each candidate shall select the election subdistrict in which he or she will run by designated place. Candidates in Dallas, Tarrant, Bexar, Ector and Midland Counties shall file an application for a place on the election ballot with the County Elections Administrator. Tex. Elec. Code Ann. §31.031 et seq. (Vernon 1986). Candidates in Harris, Travis, Jefferson and Lubbock Counties shall file such an application with the County Clerk of those counties or the County Tax Assessor-

Collector, depending on the practice of that particular county. Tex. Elec. Code Ann. §§31.1031 *et seq.*, 31.091 (Vernon 1986).

5. All terms of office under this Interim Plan shall be for four (4) years. Tex. Const. Art. V, § (1976, amended 1985). This Court is of the opinion that a two-year term is unfair to both those beginning and those ending their judicial careers.

6. Elections shall take place the first Saturday of May, 1990, with Run-off Elections to take place the first Saturday of June, 1990. Tex. Elec. Code Ann. §41.001(b)(5) (Vernon Supp. 1989).

7. An application for a place on the non-partisan election ballot must be filed not later than 6:00 p.m. on March 26, 1990. Except as modified herein, all provisions of the Texas Election Code shall be applicable to the non-partisan elections herein ordered.

8. In 1991, the Administrative Judge of the countywide district shall designate:

(1) Any courts of specialization in terms of

docket preference; and

(2) The District Court numbers in use prior to the Interim Plan's adoption. Successful incumbents shall have preference in such designation.

9. Current jurisdiction and venue of the District Courts remain unaffected, subject to modification by rule of the Supreme Court of Texas.

10. There shall be no right of recusal of judges elected under this plan. This Court is of the view that such a measure would be extremely disruptive to District Court dockets, administratively costly and could be the source of abuse by attorneys attempting to gain continuances of their cases.

IT IS FURTHER ORDERED that the above *Interim Plan* applies only to the 1990 State District Court Judicial Elections in the nine target counties at issue in this case. If the Texas Legislature fails to fashion a permanent remedy by way of a Special Called Session in the spring of 1990, then this Court will put into effect a Permanent Plan for the election of State District Court Judges in the nine target

counties in question.

IT IS FURTHER ORDERED that the Motions of Defendant-Intervenor JUDGE SHAROLYN WOOD, Defendant-Intervenor JUDGE HAROLD ENTZ and the State Defendants to Certify this Court's Memorandum Opinion and Order of November 8, 1989 as modified for clerical corrections on November 27, 1989 and December 26, 1989 for Interlocutory Appeal pursuant to 28 U.S.C. §1292(b) is hereby GRANTED IN PART.

IT IS FURTHER ORDERED that to the extent that such Motions request a stay of further proceedings in the above captioned cause such Motions are hereby DENIED.

IT IS FURTHER ORDERED that the Motion of Bexar County Judges TOM RICKOFF, SUSAN D. REED, JOHN J. SPECIA, JR., SID L. HARLE, SHARON MACRAE and MICHAEL P. PEDEN to Intervene as Defendants in the above captioned cause is hereby DENIED.

This Court, of course, has granted the right for an Interlocutory Appeal. The request to stay proceedings pending the appeal is DENIED, because the Court does not

feel that District Judges should be continued in office for an indefinite period of time. The right of the electorate to select judges in the year 1990 should not be denied unless, of course, interim action is taken by the Texas Legislature which changes the method of the selection and election of judges. The pressing need for the administration of justice in our state courts is recognized. It is the opinion of this Court that the plan set forth herein is the least disruptive that can be effected at this juncture. To allow Primary Elections in 1990 to be held in the same manner as they were in 1988 would be contra to the dictates of Fifth Circuit law and the Congressional Mandate of the Voting Rights Acts. Recognition that the November 8, 1989 Judgment has far-reaching effects is the reason for the allowance of an expedited appeal, and again the Court would encourage the Governor to call a Special Session to address the matter and, further, would request that the State Legislature remedy the current situation, as the Court is firmly of the opinion that any remedy other than this interim remedy should be done by duly elected legislators.

SIGNED and ENTERED this 2nd day of January, 1990.

LUCIUS D. BUNTON
Chief Judge

Attachment A

HARRIS COUNTY
(District 401)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	401	Harris	*HD-125
2	401	Harris	HD-126
3	401	Harris	HD-127
4	401	Harris	HD-128
5	401	Harris	HD-129
6	401	Harris	HD-130
7	401	Harris	HD-131
8	401	Harris	HD-132
9	401	Harris	HD-133
10	401	Harris	HD-134
11	401	Harris	HD-135
12	401	Harris	HD-136
13	401	Harris	HD-137
14	401	Harris	HD-138
15	401	Harris	HD-139
16	401	Harris	HD-140
17	401	Harris	HD-141
18	401	Harris	HD-142
19	401	Harris	HD-143
20	401	Harris	HD-144
21	401	Harris	HD-145
22	401	Harris	HD-146
23	401	Harris	HD-147
24	401	Harris	HD-148
25	401	Harris	HD-149
26	401	Harris	HD-150
27	401	Harris	HD-132
28	401	Harris	HD-139
29	401	Harris	HD-147
30	401	Harris	HD-148
31	401	Harris	HD-131

32	401	Harris	HD-146
33	401	Harris	HD-143
34	401	Harris	HD-142
35	401	Harris	HD-141
36	401	Harris	HD-138

* "HD" indicates Texas House of Representatives Districts.

DALLAS COUNTY
(District 402)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	402	Dallas	HD-98
2	402	Dallas	HD-99
3	402	Dallas	HD-100
4	402	Dallas	HD-101
5	402	Dallas	HD-102
6	402	Dallas	HD-103
7	402	Dallas	HD-104
8	402	Dallas	HD-105
9	402	Dallas	HD-106
10	402	Dallas	HD-107
11	402	Dallas	HD-108
12	402	Dallas	HD-109
13	402	Dallas	HD-110
14	402	Dallas	HD-111
15	402	Dallas	HD-112
16	402	Dallas	HD-113
17	402	Dallas	HD-114
18	402	Dallas	HD-100
19	402	Dallas	HD-114
20	402	Dallas	HD-111
21	402	Dallas	HD-110
22	402	Dallas	HD-102
23	402	Dallas	HD-108
24	402	Dallas	HD-107
25	402	Dallas	HD-106
26	402	Dallas	HD-105
27	402	Dallas	HD-104
28	402	Dallas	HD-103
29	402	Dallas	HD-98
30	402	Dallas	HD-99
31	402	Dallas	HD-101
32	402	Dallas	HD-109

TARRANT COUNTY
(District 403)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	403	Tarrant	HD-89
2	403	Tarrant	HD-90
3	403	Tarrant	HD-91
4	403	Tarrant	HD-92
5	403	Tarrant	HD-93
6	403	Tarrant	HD-94
7	403	Tarrant	HD-95
8	403	Tarrant	HD-96
9	403	Tarrant	HD-97
10	403	Tarrant	HD-90
11	403	Tarrant	HD-95
12	403	Tarrant	HD-94
13	403	Tarrant	HD-93
14	403	Tarrant	HD-92

BEXAR COUNTY
(District 404)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	404	Bexar	HD-115
2	404	Bexar	HD-120
3	404	Bexar	HD-116
4	404	Bexar	HD-124
5	404	Bexar	HD-123
6	404	Bexar	HD-122
7	404	Bexar	HD-121
8	404	Bexar	HD-118
9	404	Bexar	HD-124
10	404	Bexar	HD-117
11	404	Bexar	HD-119
12	404	Bexar	HD-118
13	404	Bexar	HD-115

TRAVIS COUNTY
(District 405)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	405	Travis	**JP-1
2	405	Travis	JP-2
3	405	Travis	JP-3
4	405	Travis	JP-4
5	405	Travis	JP-5
6	405	Travis	JP-4

** "JP" indicates Justice of the Peace Precincts.

JEFFERSON COUNTY
(District 406)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	406	Jefferson	***CC-1
2	406	Jefferson	CC-2
3	406	Jefferson	CC-3
4	406	Jefferson	CC-4
5	406	Jefferson	CC-4
6	406	Jefferson	CC-3

*** "CC" indicates County Commissioner Precincts.

LUBBOCK COUNTY
(District 407)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	407	Lubbock	CC-3
2	407	Lubbock	CC-4
3	407	Lubbock	CC-2

ECTOR COUNTY
(District 408)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	408	Ector	CC-2
2	408	Ector	CC-3
3	408	Ector	CC-4

MIDLAND COUNTY
(District 409)

PLACE	DISTRICT NUMBER	COUNTY	SUBDIST. NUMBER
1	409	Midland	CC-3
2	409	Midland	CC-4

FILED JAN 11, 1990

ORDER

BEFORE THIS COURT is the Motion of Attorney General Jim Mattox on behalf of the State of Texas to Alter this Court's Order of January 2, 1990; the Response thereto of Harris County District Judge Sharolyn Wood; and the Response thereto of Plaintiffs LULAC et al., Plaintiff-Intervenors Jesse Oliver, et al., and Plaintiff-Intervenors Houston Lawyers Association et al. Having considered said Motion and Responses, the Court is of the opinion that said Motion should be denied.

The Court is further of the opinion that other changes to certain terms of the injunction contained in that January 2, 1990 Order are proper. Specifically, the Court herein modifies the Order for the limited purpose of delaying the elections ordered pursuant to its Order, and removing the expedited rights of appeal previously granted in this matter.

The Court believes that delaying judicial elections pursuant to its Order of January 2, 1990 is desirable for several reasons. First, the Court notes that Governor Bill

Clements recently called a special session of February 27, 1990, to deal specifically with Texas' system of selecting judges. In the interests of comity and Federalism, legislatively directed remedial measures are preferable to measures ordered by this Court. Delaying the judicial elections ordered by this Court will serve these interests by giving the Legislature additional time. Second, judicial elections will still take place in 1990 under the modified Order, thus minimizing disruption of the Texas judiciary. Third, delaying court-ordered judicial elections will provide additional time for the United States Department of Justice to consider any remedy adopted by the Legislature before such elections occur. Fourth, delaying these elections will remove the need for expedited appeal to the Fifth Circuit by providing additional time for that Court to consider and rule upon this Court's Order before court-ordered judicial elections occur.

The Court urges the Legislature to consider in its deliberations a quotation from President Harry S. Truman, who said, "[w]e must build a better world, a far better

world--one in which the eternal dignity of man is respected."

I. The Attorney General's Motion is Properly Asserted Pursuant to Rule 59(e), Fed. R. Civ. P., and This Court Retains Jurisdiction to Modify Its Order of January 2, 1990.

The Defendant-Intervenor Judge Wood of Harris County appears to question the effect of the Attorney General's Motion on the notices of appeal filed in this case by herself and Judge Entz, and the powers of this Court to modify the terms of the injunction contained in its Order of January 2, 1990. There is no serious dispute before the Court that the parties to this case have the right under 28 U.S.C. Section 1292(a)(1) to appeal this Court's Order of January 2, 1990. If that Order were a judgment as to which the Attorney General's Motion is properly asserted under Rule 59(e), then the Parties' notices of appeal are ineffective, the Court retains jurisdiction to modify the judgment, and the deadlines for appeal are extended according to Fed. R. App. P. 4(b)(4). The Court believes that Order is such a judgment, and that this is the correct analysis.

A "judgment" for purposes of Rule 59(e), which provides for the amendment of a judgment and the postponement of the time for filing an appeal, is defined in Rule 54(a). See Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE Section 2651 and cases cited therein. Rule 54(a) defines judgment as an "appealable order." 28 U.S.C. Section 1292(b) undisputedly makes this Court's Order of January 2, 1990 appealable of right. Therefore a motion to alter or amend the judgment is properly asserted under Rule 59(e).

The Attorney General's Motion would properly be brought under Rule 62(c), if jurisdiction of the case were already lodged in the court of appeals, for example where a Rule 59(e) motion was not timely made and appeal was taken, or a Rule 59(e) motion was made and ruled upon, and appeal subsequently taken.

The Court assumes for the purposes of this Motion that there exist other circumstances that would make a Rule 59(e) Motion improper here, although the Court takes pains to note that the parties have not cited the Court to such

circumstances, and the Court in examining its jurisdiction has so far found none. In that event, Judge Wood contends, the Attorney General's Motion is one properly asserted under Rule 62(c), under which Rule this Court's modification powers are curtailed.

The Court also assumes that its sua sponte alteration of a judgment, that is independent of and goes beyond the alteration requested by a party under Rule 59(e), might be reviewed under the standard of Rule 62(c). The problem is that the timely filing of a Rule 59(e) motion, which the Court believes has been done here, suspends the appeal process and renders Rule 62(c) technically inapplicable because the case is not on appeal. Absent appeal, a district court has complete power over its interlocutory orders. *Ideal Toy Corp. v. Sayco Doll Corp.*, 302 F.2d 623 (2nd Cir. 1962).

It is important to note that this Court has consistently voiced its preference for the Texas authorities devising a plan for judicial elections consistent with the Voting Rights Act, with reasonable dispatch, and therefore has considered

and styled its January 2, 1990 injunction as an interim plan. The Order is, of course, binding and effective if, and to the extent, the Legislature fails to act. If the Legislature devises an acceptable plan under the Voting Rights Act this lawsuit, and the Court's injunction along with it, would likely become moot. Of course, an argument could be made that this Court's interim plan of redistricting, because conditional in this sense, is not a judgment at all until the contingency has been removed, and therefore is not even appealable. In any event, this Court's overall plan of encouraging legislative redistricting is, the Court believes, relevant to considering, under the law of Rule 62(c), what constitutes a modification of an injunction "in aid of appeal."

In sum, the Federal Rules of Civil Procedure do not seem to provide a neat category for classifying motions on equitable remedies such as the one at issue. This Court is of the opinion that the Attorney General's Motion is one properly brought under Rule 59(e) because this Court's Order of January 2, 1990 is a "judgment" within the meaning of Rule 54(a). However, in the event this

characterization is error, as Judge Wood seems to contend it is, the Court believes it proper to apply the more restrictive analysis under Fed. R. Civ. P. Rule 62(b) as set out in cases cited by the parties.

II. Alternatively, This Court Possesses Jurisdiction to Make Modifications to Its January 2, 1990 Order as Ordered Herein Pursuant to Rule 62(b), Fed. R. Civ. P.

Judge Wood challenges this Court's jurisdiction to entertain a motion to modify its January 2, 1990 Order, and presumably as well the Court's jurisdiction to modify said Order sua sponte. However, despite Judge Wood's artful choice of quotations from pertinent case law, the Court is not persuaded that it lacks jurisdiction to make certain changes in its Order even if the injunction contained therein is properly on appeal.

Once appeal is taken from an interlocutory judgment (as the Court assumes for discussion purposes that it has been here), Fed. R. Civ. P. 62(c) provides that "the court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal ...." The scope

of this Court's power under Rule 62(c) has most recently been the subject of analysis by the Fifth Circuit in *Coastal Corp. v. Texas Eastern Corp.*, 869 F.2d 817 (5th Cir. 1989). Under the holding in *Coastal*, this Court is definitely constrained insofar it lacks authority to dissolve the injunction on appeal. *Id.* at 821. But regarding less radical modifications, the Court is directed to limit the exercise of its power to "maintaining the status quo." *Id.* at 820.

Judge Wood would have the Court interpret "maintaining the status quo" to mean that this court may do nothing except "in aid of the appeal." *Willie v. Continental Oil Co.*, 746 F.2d 1041 (5th Cir. 1984). The Fifth Circuit applied this directive in *Willie* to divest the District Court of jurisdiction to modify a judgment under Rule 60(b) because of inadvertence or excusable neglect, where substantive rights of the parties were at stake. *Id.* at 1045. In *Willie*, the parties sought to have the District Court correct its judgment to incorporate a mistakenly-omitted stipulation regarding the percentage of liability to be borne by one of the defendants. The District Court was empowered to deny

such a motion because denial would be "in furtherance of the appeal". But had the District Court wished to grant the Rule 60(b) motion, leave of the Court of Appeals would have been required. *Id.* at 1046.

In the Coastal case, however, the Fifth Circuit seemed to impose a different standard of "maintaining the status quo," and defining that standard to mean that a district court may not take action, such as vacating an injunction, that would presumably divest the court of appeals from jurisdiction while the issue is on appeal. *Coastal*, *supra*, at 820. Cases cited in the *Coastal* opinion consistently deal with granting or staying injunctions during the pendency of appeal. *Id.* Consistent with the analysis expressed in the Attorney General's brief, this Court interprets *Coastal* to say that it may not vacate the injunction now in issue while it is on appeal. No such action is contemplated.

Even if the "in aid of appeal" standard set out in *Willie* should guide the Court, it would seem that the modifications now ordered, which primarily give the Legislature additional time to consider redistricting, does not violate that standard.

Accordingly, this Court's Order of January 2, 1990 will be amended.

IT IS ORDERED that this Court's Order of January 2, 1990 be, and is hereby amended pursuant to the following directives only.

Item numbered "6" at pages 6 and 7 is amended to read as follows:

6. Elections shall take place on November 6, 1990 with runoff elections, if and where necessary, on December 4, 1990.

Item numbered "7" at page 7 is amended to read as follows:

7. An application for a place on the non-partisan election ballot must be filed not later than 6:00 p.m. on September 19, 1990. Except as modified herein, all provisions of the Texas Election Code shall be applicable to the non-partisan elections herein ordered.

IT IS FURTHER ORDERED that any rights c expedited appeal granted in this matter be, and are hereby

RESCINDED.

SIGNED AND ENTERED this 11th day of January, 1990.

s/_____
LUCIUS D. BUNTON
CHIEF JUDGE